

**Award**  
**NASD Dispute Resolution, Inc.**

In the Matter of the Arbitration Between

**Name of Claimants**

Matt Skittle, Matt Skittle, Jr., Elena Skittle, a/k/a Elena Skittle-Watson, Sharon Skittle, individually and as custodian for Cassandra Skittle and Carly Nicole Skittle

**Name of Respondents**

Case No. 99-02946

William J. Zalewski  
PaineWebber, Inc.

Hearing Location: Pittsburgh, PA

**REPRESENTATION OF PARTIES**

Claimants, Matt Skittle, Matt Skittle, Jr., Elena Skittle, a/k/a Elena Skittle-Watson, Sharon Skittle, individually and as custodian for Cassandra Skittle and Carly Nicole Skittle, hereinafter individually and collectively referred to as "Claimants": Thomas J. Schuchert, Esq., Schuchert & Associates, Pittsburgh, PA and Corrales, NM.

Respondents, William Zalewski ("Zalewski") and PaineWebber Inc. ("PaineWebber"), hereinafter collectively referred to as "Respondents": Sandra D. Grannum, Corporate Vice-President and Associate General Counsel, PaineWebber, Inc., Weehawken, NJ.

**CASE INFORMATION**

Statement of Claim filed on: June 28, 1999.

Claimants Matt Skittle, Matt Skittle, Jr., and Elena Skittle, a/k/a Elena Skittle-Watson, signed the Uniform Submission Agreement on: June 16, 1999.

Claimant Sharon Skittle, individually and as custodian for Cassandra Skittle and Carly Nicole Skittle, signed the Uniform Submission Agreement on: August 19, 1999.

Statement of Answer filed by Respondents, Zalewski and PaineWebber, on: October 19, 1999.

Respondent PaineWebber executed the Uniform Submission Agreement by Sandra D. Grannum, Corporate Vice President and Associate General Counsel on: October 18, 1999.

Respondent Zalewski signed the Uniform Submission Agreement on: October 19, 1999.

Amended Statement of Claim filed on: September 15, 2000

### CASE SUMMARY

Claimants asserted, among other things, the following causes of action: unsuitability; failure to deal with Claimants in good faith; excessive trading; that the purchase of Industrial Scientific common stock was unauthorized; unauthorized transfers and withdrawals of funds; unauthorized use or borrowing of Claimants' funds; misrepresentation and failure to disclose risks; breach of contract; breach of fiduciary duty; negligence; fraud; violation of Pennsylvania Consumer Protection Law ("CPL", 73 Pa. C.S. Sections 201-1 *et seq*); and that Respondent PaineWebber is responsible for Respondent Zalewski's conduct pursuant to the principle of *Respondeat Superior* and for its failure to supervise Zalewski properly. The securities or products involved in Claimants' claim included, among other things, municipal bonds, publicly traded tax-sheltered Limited Partnerships, annuities, common stock, and life insurance policies.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

- 1) Claimants failed to state a claim upon which relief can be granted;
- 2) Claimants' claims are barred by the applicable Statute of Limitations;
- 3) Claimants' claims are ineligible for arbitration pursuant to Rule 10304 of the NASD Code of Arbitration Procedure;
- 4) Claimants' claims are ineligible for arbitration pursuant to Rule 10301(d) of the NASD Code of Arbitration Procedure;
- 5) Claimants' claims are barred by released they executed in Respondents' favor;
- 6) Claimants' claims are barred by the doctrines of waiver, estoppel and laches;
- 7) Claimants' claims are barred by ratification;
- 8) the Pennsylvania Consumer Protection Act, 73 Pa. C.S. Sections 201-1 *et seq.* does not apply to the claims of the type Claimants allege herein;
- 9) the transactions of which Claimants complain were suitable for Claimants and were consistent with their expressed financial objectives;
- 10) Claimants authorized, before the fact, every investment of which they complain, after the investment was explained to and discussed with them;
- 11) Claimants were fully advised of the risks that accompanied their investments

and they knowingly chose to assume those risks;

- 12) Claimants were not defrauded or misled in any way;
- 13) Respondent PaineWebber supervised Respondent Zalewski in a responsible and adequate manner;
- 14) Respondent Zalewski acted fairly and scrupulously with Claimants' property;
- 15) Respondent Zalewski was not a fiduciary with respect to the management of Claimants' assets. Nevertheless, even if he were, he fulfilled the standard of conduct to which a fiduciary is placed; and,
- 16) to the extent Claimants are dissatisfied with the performance of their accounts, that dissatisfaction arises from their own investment objectives, excessive account withdrawals and/or other market forces beyond the control of Respondents.

#### **RELIEF REQUESTED**

Claimants requested in their pleading as against Respondents the following damages: compensatory damages in the amount of \$85,939; lost opportunity damages in connection with the amounts Respondent Zalewski directed into PaineWebber Limited Partnerships; lost opportunity damages in connection with the amounts Respondent Zalewski directed, by unauthorized and/or deceptive trading, into unsuitable common stocks; lost opportunity damages in connection with the amounts which Respondent Zalewski used, borrowed, or misappropriated from Claimants' accounts without authorization; punitive damages and attorney's fees; treble damages in the amount of \$257,817 pursuant to Sections 201-9.2 of the Pennsylvania Consumer Protection Law; forum fees; and attorney's fees.

Respondents requested that all of Claimants' claims be dismissed with prejudice.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The panel, in a Pre-Hearing Order issued on September 8, 2000, granted Respondents' Motion to Bar and Dismiss Claims Ineligible for Arbitration, specifically barring all claims regarding alleged acts occurring before April 10, 1992. At the close of Claimants' claim, Respondents made a Motion to Dismiss Claimants' case with prejudice. The Panel adjourned the hearing and permitted Claimants' to file their revised exhibits and Profit and Loss Statement. After due deliberation, the Panel granted Respondents' Motion to Dismiss Claimants' case in its entirety.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) that the Panel dismisses the Claimants' claim on motion by the Respondents in its entirety;
- 2) that Claimants' request for treble damages is denied in its entirety;
- 3) that each party is to bear its own respective costs and expenses except as fees are specifically addressed below; and,
- 4) that any and all relief requests not specifically addressed are denied in their entirety.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each dispute Resolution claim. Initial claim filing fee = \$ 300

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member ~~firm~~ that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is PaineWebber, Inc. a party.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Number (1) Pre-hearing session with Panel x \$1,125	= \$1,125
Pre-hearing conference(s): Date May 11, 2000	1 session
Number (6) Hearing sessions x \$1,125	= \$6,750

Hearing Dates:	September 26, 2000	2 sessions
	September 27, 2000	2 sessions
	September 28, 2000	2 sessions

Total Forum Fees = \$7,875

The Panel has assessed 50% of the forum fees jointly and severally to Claimants and 50% of the forum fees jointly and severally to Respondents, so that Claimants are assessed \$3937.50, and Respondents are assessed \$3937.50.

### Fee Summary

Claimants, Matt Skittle, Matt Skittle, Jr., Elena Skittle, a/k/a Elena Skittle-Watson, Sharon Skittle, individually and as custodian for Cassandra Skittle and Carly Nicole Skittle, are jointly and severally assessed the following fees:

Initial Filing Fee = \$ 300.00

Forum Fees = \$3,937.50

Total Fees = \$4,237.50

Less payments = \$1,550.00

Balance Due NASD Dispute Resolution, Inc. = \$2,687.50

Respondents, William Zalewski and PaineWebber, Inc., are jointly and severally assessed the following fee:

Forum Fees = \$3,937.50

Less Payments = \$ 00.00

Balance Due NASD Dispute Resolution, Inc. (jointly & severally) = \$3,937.50

Respondents, PaineWebber, Inc. are assessed the following fees:

Member Fees = \$4,600.00

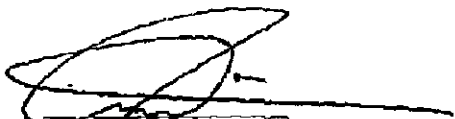
Total Fees = \$4,600.00

Less Payments = \$4,600.00

Balance Due NASD Dispute Resolution, Inc. = \$ 00.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures



Richard W. Dissen, Esq.  
Public Arbitrator, Presiding Chairperson

1-2-01  
Signature Date

Beth Rackley Hesselson  
Public Arbitrator, Panelist

Signature Date

Glenn L. Nobel  
Industry Arbitrator, Panelist

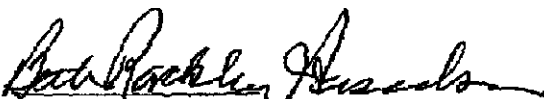
Signature Date

January 2001  
Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

Richard W. Dissen, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Beth Rackley Hesselton  
Public Arbitrator, Panelist

1-3-01  
Signature Date

Glenn L. Nobel  
Industry Arbitrator, Panelist

Signature Date

January 5, 2001  
Date of Service (For NASD-DR office use only)

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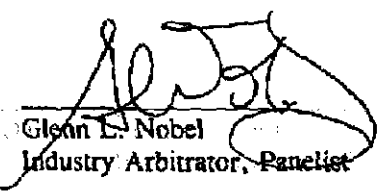
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Beth Rackley Hesselson  
Public Arbitrator, Panelist

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Signature Date

  
Glenn E. Nobel  
Industry Arbitrator, Panelist

1-4-01  
Signature Date

January 5, 2001  
Date of Service (For NASD-DR office use only)