

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

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In the Matter of the Arbitration Between

The Estate of Ruth R. Hall,  
Claimant

v

Case No. 99-04757

PaineWebber, Inc.  
William L. Crull, IV,  
Respondents

Hearing Location: Washington, DC

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**REPRESENTATION OF PARTIES**

Claimant, the Estate of Ruth Hall (Hall Estate), was represented by Marc B. Dorfman, Esq. formerly of the law firm of Freedman, Levy, Kroll & Simonds, Washington, DC and currently of the law firm of Foley & Lardner, Washington, DC.

Respondent PaineWebber, Inc. (PaineWebber) was represented by Sandra Grannum, Esq., Corporate Vice President and Associate General Counsel, of PaineWebber, Inc., Weehawken, NJ.

Respondent William Crull, IV (Crull) was represented by Joelle F. Evans, Esq., of the law firm of Schonekas Evans & McGoey, L.L.C., New Orleans, LA.

**CASE INFORMATION**

Statement of Claim was filed on October 20, 1999.

The Uniform Submission Agreement was signed by Sidney R. Hall as Executor of the Estate of Ruth Hall, on October 6, 1999. A Letter of Administration issued by the Superior Court of the District of Columbia dated June 30, 1999 which named Sidney R. Hall, Personal Representative, as Administrator of the Estate, was provided.

Statement of Answer was filed by Respondent PaineWebber on February 23, 2000.

The Uniform Submission Agreement of PaineWebber was executed by Sandra Grannum, as Corporate Vice President, on February 23, 2000.

Statement of Answer was filed by Respondent Crull on February 23, 2000. A First Amended Statement of Answer was filed by Crull on April 6, 2000. A Uniform Submission Agreement was signed by Crull on February 22, 2000.

### CASE SUMMARY

Claimant alleged, among other things, the following causes of action: fraud, breach of contract, breach of fiduciary duty, violations of federal and District of Columbia securities law, violation of the rules of the New York Stock Exchange and of the National Association of Securities Dealers, Inc., churning, misrepresentation, failure to supervise, unauthorized trading and omission of facts.

In 1994, Mrs. Ruth Hall was solicited by Crull, a PaineWebber broker, to transfer her securities brokerage business to him. At that time, Mrs. Hall owned or controlled approximately \$1,000,000 in cash and securities. Crull represented to Mrs. Hall that he could successfully manage her investments and provide "outstanding performance and service" to her. PaineWebber and Crull prepared and disseminated marketing materials promoting Crull's prowess as a broker and speak to his ability to monitor all pertinent information concerning his clients' accounts by computer and provide his customers with up-to-date and accurate reports about their investments so that they do not have to keep track of such information themselves.

In early 1995, Mrs. Hall did open a securities brokerage account with Crull and PaineWebber. Subsequently, additional accounts were opened. Mrs. Hall's primary investment objective for her accounts was income, with growth being a secondary objective. This was confirmed in a letter from Crull to Mrs. Hall, which also acknowledged that Mrs. Hall needed to draw monthly income from the accounts.

PaineWebber and Crull solicited Mrs. Hall to agree to use margin in the Personal Account, knowing that she did not have the education, business background or investment experience to appreciate the risks associated with the use of margin. Using margin, Crull turned over the equity in the Personal Account approximately 8 times, causing the account to realize net losses of \$8,826.15. In December 1995, the Personal Account had a net value of \$42,230.36. In December 1997, the net account value of the Personal Account was \$3,694.39.

In October 1997, Crull urged Mrs. Hall to deposit into the Trust Account shares of Schlumberger, Ltd. securities with a market value of approximately \$500,000. Mrs. Hall expressly told Crull that she did not want to sell her shares of Schlumberger.

In November 1997, Crull changed the investment objectives on the Trust Account to growth first and income second, without discussing this change with Mrs. Hall.

During the ensuing years, Crull caused Mrs. Hall's accounts to engage in over 140 transactions, and changed her investment objectives without consulting her.

Between October 1996 and December 1998, PaineWebber and Crull generated over \$80,000 in commissions from Mrs. Hall's accounts and caused excessive activity in the accounts that was unsuitable in light of Mrs. Hall's objectives and not disclosed to Mrs. Hall.

The Statement of Claim alleges that at all material times, PaineWebber and Crull knew that Mrs. Hall lacked the skill and experience necessary to interpret the confirmation slips, monthly statements and other documents that were sent to her and that she completely trusted Crull and PaineWebber to carry out her investment goals. Mrs. Hall's accounts were more profitable for PaineWebber and Crull than they were for Mrs. Hall.

Unless specifically admitted in its Answer, Respondent Crull denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by the doctrine of ratification; Claimant's claims are barred by the doctrines of laches, estoppel and waiver; Claimant failed to use due diligence with respect to the transactions and acts complained of and, accordingly, is barred from asserting or recovering for any such transactions or acts; Claimant specifically and in all events had knowledge of and assumed the risks incident to investing in the securities market; assuming Claimant suffered damages, which is denied, such damages were caused or contributed to by persons, conditions, or events beyond the control of Crull; Crull in discharging his duties to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinary prudent persons would exercise in similar circumstances and like positions; Claimant's demand for damages is speculative and improper as a matter of law and without foundation as a matter of fact; Claimant is not entitled to attorney's fees; Claimant is not entitled to punitive damages; the Statement of Claim fails to state a cause of action against Crull.

Unless specifically admitted in its Answer, Respondent PaineWebber denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim; Claimant's claims are barred by the Statute of Limitations; PaineWebber acted in compliance with all applicable rules and regulations and acted in good faith and did not directly induce the alleged act or acts, if any, constituting alleged violations of law; Claimant has alleged no damages; to the extent Claimant has suffered any damages, those damages have no causal relationship with any act committed by PaineWebber, nor are they legally attributable to PaineWebber; Claimant is estopped by her conduct from maintaining this action; the injuries, if any, alleged to have been sustained by Claimant was caused, in whole by Claimant; Respondent PaineWebber properly, diligently, and adequately supervised Crull and every other employee, agent and representative of PaineWebber with respect to the Claimant's accounts and complied with all relevant laws, rules, regulations and policies regarding the duty of supervision; the transactions complained of in the Statement of Claim were duly authorized and instructed by Claimant who, at all times, was in sole control of the assets in her accounts at issue; Claimant failed to mitigate her damages; Claimant's claims are barred, in whole or in part by her assumption and acceptance of the risk of loss; Claimant, through her acts and deeds, waived her rights to maintain this action against PaineWebber; PaineWebber breached no duties owed to Claimant.

### **RELIEF REQUESTED**

Claimant, in its pleading, requested:

Compensatory Damages	\$ 500,000
Punitive Damages	\$5,000,000
Interest	Terms not specified, but including pre-judgment interest
Attorneys' Fees	Amount not specified
Other Costs	Amount not specified

Respondent Crull, in his Answer, requested that an Order dismissing him from these proceedings be entered, that the Statement of Claim be dismissed and that he be awarded:

Attorneys' Fees	Amount not specified
Other Costs	Amount not specified

Respondent Painewebber, in its Answer, requested that the Statement of Claim be dismissed and that it be awarded:

Attorneys' Fees	Amount not specified
Other Costs	Amount not specified

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

A Settlement Agreement and Order was entered into between Claimant and Crull and signed by the attorneys for the parties on December 12, 2000. The Panel approved the Settlement Agreement.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. That Respondent Painewebber is liable to and shall pay Claimant compensatory damages in the amount of \$187,360.00.
2. That interest is awarded at the rate of 6% simple interest per annum on said amount from November 1, 1999 until the date the Award is paid.
3. That Respondent Painewebber is liable to and shall pay Claimant \$33,000 as attorney's fees.

4. That the parties shall bear their respective costs and fees except as Fees are specifically addressed below.

5. That any and all claims for relief not specifically addressed herein 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 claim:

Initial claim filing fee	= \$600
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#### **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 firms is a party.

Member surcharge	= \$3,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$5,000
	<u>\$8,600</u>

#### **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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

2 Pre-hearing sessions with Panel x \$1200	= \$2400
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Pre-hearing conferences:

October 12, 2000	1 session
November 13, 2000	1 session

6 Hearing sessions x \$1200	= \$7200
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Hearing Dates:

December 18, 2000	2 sessions
December 19, 2000	2 sessions
January 29, 2001	2 sessions

Total Forum Fees	= \$9600
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The Panel has assessed 50% (\$4,800) of the forum fees to Claimant.

The Panel has assessed 50% (\$4,800) of the forum fees to Respondent PaineWebber.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant requested copies of hearing session tapes at \$90.00.

**Fee Summary**

Claimant, the Estate of Ruth Hall, is assessed the following fees:

Initial Filing Fee	= \$ 600
Forum Fees	= \$4,800
<u>Administrative Costs</u>	<u>= \$ 90</u>
Total Fees	= \$5,490
<u>Less payments</u>	<u>= \$1,800</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,690

Respondent, PaineWebber, is assessed the following fees:

Member Fees	= \$ 8,600
Forum Fees	= \$ 4,800
 Total Fees	 = \$13,400
<u>Less payments</u>	<u>= \$14,600</u>
Refund Due PaineWebber	= \$ 1,200

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

FROM :

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03-15-2001 18:26 From-NASD

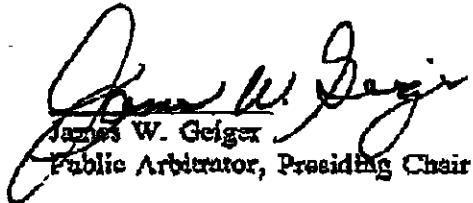
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Concurring Arbitrators' Signatures

  
James W. Geiger  
Public Arbitrator, Presiding Chair

3/15/01  
Signature Date

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James F. Tierney, Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Anne Q. Uno  
Industry Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

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

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James W. Geiger  
Public Arbitrator, Presiding Chair

Signature Date

  
James F. Tierney, Esq.  
Public Arbitrator, Panelist

  
Signature Date

Anne Q. Uno  
Industry Arbitrator, Panelist

Signature Date

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Public Arbitrator, Presiding Chair

Signature Date

James F. Tierney, Esq.  
Public Arbitrator, Panelist

Signature Date

Anne Q. Uno  
Anne Q. Uno  
Industry Arbitrator, Panelist

3/15/01  
Signature Date

3/16/01  
Date of Service (For NASD-DR office use only)