

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Suzanne Clemente, (Claimant) vs. Smith Barney, Inc., Prudential Securities Inc., and Thomas B. Healy, (Respondents)

Case Number: 00-01033

Hearing Site: Albany, New York

REPRESENTATION OF PARTIES

Claimant, Suzanne Clemente, hereinafter referred to as "Claimant": Richard L. Burstein, Esq., Fernandez, Burstein & Tuczinski, P.C., Albany, NY.

Respondent, Smith Barney, Inc. ("SBI"): Victor A. Machcinski, Jr., Esq., Senior Vice President and Associate General Counsel, Salomon Smith Barney, Inc., New York, NY.

Respondent, Prudential Securities Inc. ("PSI"): Patrick Gaffney, Esq., First Vice President and Associate General Counsel, Prudential Securities Inc., New York, NY. Previously represented by: Jeanne Samuels, Esq., First Vice President and Associate General Counsel, Prudential Securities Inc., New York, NY.

Respondent, Thomas B. Healy ("Healy"): Victor A. Machcinski, Jr., Esq., Senior Vice President and Associate General Counsel, Salomon Smith Barney, Inc., New York, NY (for the period of time in question that Healy was employed at SBI) and Patrick Gaffney, Esq., First Vice President and Associate General Counsel, Prudential Securities Inc., New York, NY (for the period of time in question that Healy was employed at PSI).

CASE INFORMATION

Statement of Claim filed on or about: March 7, 2000.

Claimant signed the Uniform Submission Agreement: February 14, 2000.

Joint Statement of Answer filed by SBI and Healy on or about: May 3, 2000.

SBI signed the Uniform Submission Agreement: February 8, 2001.

Healy did not sign a Uniform Submission Agreement.

Joint Statement of Answer filed by PSI and Healy on or about: May 11, 2000.

PSI signed the Uniform Submission Agreement: May 11, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; unauthorized trading; fraud; misrepresentation; breach of contract; mismanagement of accounts; lack of diversification; violations of common law principles, "prudent man principles", and ERISA standards; negligence; failure to supervise; breach of fiduciary duty; and violations of Federal and State Statutory and Common Law including, but not limited to, violations of the Securities Act of 1933, the Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. Claimant's claim involved a variety of bonds.

Unless specifically admitted in their Answer, SBI and Healy denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state any cause of action upon which relief can be granted; at all relevant times, Claimant had or should have had full knowledge of all material facts concerning the investments in her accounts; to the extent there was any loss or diminution in the value of Claimant's accounts, such loss or diminution was the result of unforeseen market fluctuations or other events over which Respondents had no control, and was within the risk that Claimant voluntarily assumed; the damages allegedly suffered by Claimant were not proximately caused by any act or recommendation attributable to Respondents; Claimant's claims are barred because, to the extent representations were made regarding securities, they were merely expressions of opinion, not material fact, and as such are not actionable; Claimant authorized the purchase of all investments for her accounts; Claimant's claims are barred by the principles of laches, waiver, estoppel, and ratification; Claimant's claims, in whole or in part, are time-barred; Claimant has failed to state a claim for punitive damages; and Claimant has no right to recover attorneys' fees.

Unless specifically admitted in their Answer, PSI and Healy denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant, at all relevant times, had or should have had full knowledge of all material facts concerning the investments made, including the nature of the investments and the associated risks; Claimant authorized the execution of the transactions at issue, and therefore, is estopped from bringing this action; Claimant may not recover anything against Respondents because she ratified all of the activity in her accounts; the purported wrongdoing on the part of Respondents was not the proximate cause of any claimed losses for which Claimant seeks recovery; Claimants have not incurred any damages arising from the actions of Respondents; and Claimant's accounts were not invested in contravention of her investment objectives.

RELIEF REQUESTED

Claimant requested damages in an amount not exceeding \$999,000.00, representing actual damages, punitive damages, interest and damages based upon a well-managed portfolio, and disgorgement of commissions earned by Respondents. Claimant also requested forum fees, arbitrator fees, attorneys' fees, expert witness fees, and such other relief as the Panel deems just and appropriate.

SBI and Healy requested that Claimant's Statement of Claim be dismissed in all respects, and that they be awarded their fees and expenses, attorneys' fees, forum fees, and all other costs of this proceeding.

PSI and Healy requested that the Panel deny Claimant's request for damages, and award them their fees and expenses incurred in connection with the defense of these claims.

OTHER ISSUES CONSIDERED AND DECIDED

Healy did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Healy be and hereby is solely liable for and shall pay to Claimant the sum of \$12,343.00 as compensatory damages, based upon the Panel's finding of liability for breach of fiduciary duty and unauthorized trading during the management of Claimant's IRA account at SBI.
2. Healy be and hereby is solely liable for and shall pay to Claimant the sum of \$9,385.00 as compensatory damages, based upon the Panel's finding of liability for breach of fiduciary duty and unauthorized trading during the management of Claimant's personal account at SBI.

3. PSI and Healy be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$24,796.00 as compensatory damages, based upon the Panel's finding of liability for breach of fiduciary duty, unauthorized trading, and failure to supervise during the management of Claimant's IRA account at PSI.
4. Claimant's request for punitive damages is hereby denied.
5. All other requests for relief are hereby denied.

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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Smith Barney, Inc. and Prudential Securities Inc. are parties.

Smith Barney, Inc.

Member surcharge = \$ 2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 3,500.00

Prudential Securities Inc.

Member surcharge = \$ 2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 3,500.00

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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: August 21, 2000	1 session
Eleven (11) Hearing sessions x \$1,200.00	= \$13,200.00
Hearing Dates: February 13, 2001	2 sessions
February 14, 2001	2 sessions
February 15, 2001	2 sessions
May 15, 2001	2 sessions
May 16, 2001	2 sessions
May 17, 2001	1 session
Total Forum Fees	= \$14,400.00

1. The Panel has assessed \$7,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$7,200.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$7,200.00</u>
Total Fees	= \$7,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00
2. SBI be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$6,100.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$2,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,500.00

3. PSI be and hereby is solely liable for:

<u>Member Fees</u>	= \$6,100.00
<u>Total Fees</u>	= \$6,100.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,200.00
<u>Total Fees</u>	= \$7,200.00
<u>Less payments</u>	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

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

ARBITRATION PANEL

James B. Tuttle, Esq.	-	Public Arbitrator, Presiding Chair
Donald G. Hatt, Esq.	-	Public Arbitrator
Susan M. Steindorff	-	Industry Arbitrator

Concurring Arbitrators' Signatures

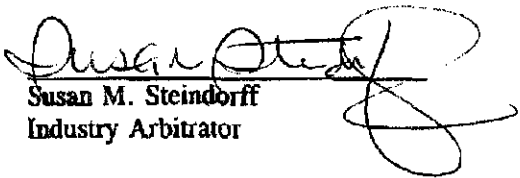
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

James B. Tuttle, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald G. Hatt, Esq.
Public Arbitrator

Signature Date



Susan M. Steindorff
Industry Arbitrator

Signature Date

June 8, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

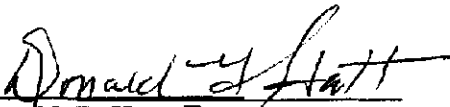
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James B. Tuttle, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Donald G. Hatt, Esq.
Public Arbitrator

Signature Date

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Industry Arbitrator

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