

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between)
STUART E. WARREN, JR. et al.)
)
) Claimants)
)
) v.)
)
) E.F. HUTTON & CO., INC., PRUDENTIAL) NASD No. 87-00464
)
) BACHE SECURITIES, INC. and CHARLES)
)
) GREENBERG)
)
) Respondents)
)

Case Summary

The original statement of claim was filed with the NASD on March 6, 1987 by Sussman and Samson, Ltd. ("Sussman") on behalf of Stuart E. Warren, Jr., Patricia J. Warren and the Moneymakers Investment Club ("Club"). Stuart E. Warren, Jr. was president of the Club and made all trading decisions. This claim was later amended to include individual Club numbers. In May of 1988, James A. Moylan and Associates, Ltd. ("Moylan") entered an appearance on behalf of several Club members, including some represented by Sussman. Sussman later withdrew as counsel for these Club members, as well as for the Club itself. In addition, three Club members were represented by the Pace Offices of Ditkowsky and Contorer ("Ditkowsky") and filed a claim in the matter.

After a pre-hearing conference conducted by the NASD, parties submitted amended pleadings in October of 1989 which specifically set out the individual claimants and their claims. In the Amended Statement of Claim filed on their behalf by Sussman, Stuart E. Warren, Jr., Patricia J. Warren and Helen Dziedzic (Warren Claimants) alleged that Respondents, E.F. Hutton & Company, Inc. ("Hutton"), Prudential-Bache Securities, Inc. ("Pru-Bache") and Charles Greenberg ("Greenberg") committed the following acts: 1) furnished false and misleading financial information regarding the account status, which Mr. Warren utilized in trading the large and complex option positions in his individual and Club account; 2) that Respondents furnished claimants with misleading information regarding the net asset value of the Club account, or the cost per share, prior to claimants' investment in the Club; 3) that Hutton and Pru-Bache failed to adequately or properly supervise and handle the accounts, and 4) that Respondents breached a fiduciary duty owed the Claimants. The Warren Claimants alleged that the above actions of the Respondents were violative of the Federal Securities Acts, State Securities Act, and the Common Law.

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An Amended Statement of Claim was filed by Moylan on behalf of the following claimants: Mr. and Mrs. John Abbatiello; Don Bellm; Henry Bergardt; Marion Borgardt; Tony Camillo; Mr. and Mrs. Giulio Campo; Mr. and Mrs. Robert Davidson; Frank Fiarito; Mr. and Mrs. Theodore Gurdak; Roger Johnson; Gertrude and Anna Montalbano; James Smith; John Souter; Clarence Waynauskas and Thomas McEnaney ("Johnson-Smith Claimants"). The claim alleged the following: 1) that Respondents offered and sold unregistered securities in the Moneymakers Investment Club without determining the suitability of the investment for the claimants; 2) that Respondents provided false and misleading statements and failed to disclose material facts in connection with the offer and sale of the Moneymakers' securities and option trading; 3) that Greenberg was unaware of the financial status of the Club account and provided erroneous and misleading information about the account, causing the account to be traded when its true value and position were not known; 4) that Respondents failed to complete the transfer of the Club account from Pru-Bache to Hutton in a timely fashion, causing the options trades made during the transfer to be based upon inaccurate information provided by Respondents; 5) that Respondents failed to determine the suitability of trading listed stock options for the Johnson-Smith claimants and failed to provide an options prospectus or other risk disclosure statement, and, 6) that Pru-Bache and Hutton are responsible for Greenberg's actions under the doctrine of Respondent Superior and as a "control person" under Section 20 of the Securities Exchange Act of 1934.

Club members Raymond James, Donald Karner and Vincent O'Donnell were represented by Ditkowsky, and by letter dated December 26, 1989, adopted the response of the Johnson-Smith claimants and joined with them in their pleadings.

Respondents deny every allegation of wrongful, improper or actionable conduct on its part. Specifically, Respondents allege that claimants were kept full advised of the account status and individually or through Stuart E. Warren, Jr.; that the claimants chose the method of valuation used by Greenberg to determine the net worth of the account; that the accounts were transferred in accordance with proper industry practice, and that any losses incurred were due to the faulty investment strategy pursued by Stuart E. Warren, Jr. during a change in the market and not because a problem in the account transfer. Affirmatively, Respondents state that because accurate statements were provided, Claimants could not rely on any oral representations made; that all claims are barred under the doctrines of ratification, estoppel, waiver, laches and failure to mitigate damages; that claimants are barred by their own contributory negligence; that the claimants voluntarily assumed the risk inherent in their investment strategy and that any loss was incurred by the acts or omission of Stuart E. Warren, Jr. as agent for the Club member.

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Pru-Bache counterclaims against Claimants requesting indemnification and/or contribution for any liability arising out of any unauthorized acts of Stuart E. Warren, Jr. and for the debit balance in the account. Furthermore, Pru-Bache cross-claims against Hutton and Greenberg for the debit balance in the account and for indemnification and/or contribution. Hutton has filed a counterclaim against Stuart E. Warren, Jr. for any unauthorized acts committed by him and crossclaims against Pru-Bache for any losses attributable to the account transfer. The parties named have denied the allegations of the counterclaim and crossclaims.

Relief Requested

The Warren claimants request damages in the amount of \$185,000.00 plus interest against Respondents, representing \$25,000.00 invested as members of the Club and \$160,000.00 the Warrens had in their joint account. Furthermore, the Warren claimants request all costs, including forum fees and reasonable attorney's fees, and other proper and just relief.

The Johnson-Smith claimants request an award permitting them to rescind their investment in the Money-makers Investment Club, totalling \$169,875.30 or, in the alternative, for their actual damages. In addition, claimants request costs, interest and their reasonable attorney's fees, and for such further relief as may be awarded.

Respondents Hutton, Pru-Bache and Greenberg request that all claims be dismissed in their entirety and that they be awarded their attorney's fees, the costs and expenses incurred in defending the action, and such other relief as the panel deemed appropriate.

Preliminary Matters

A pre-hearing conference for the purpose of settling discovery difficulties and to determine a hearing date was held in the Chicago offices of the NASD on February 16, 1990 before arbitrators — Charles E. Jones, Esq., Chairman, and Charles W. Murdock, Esq. Arbitrator Malcolm J. Irving was unable to attend for personal reasons and the parties agreed to proceed in front of a two member panel for the pre-hearing conference.

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Award

On April 26 and 27, 1990 in Chicago, Illinois during a hearing lasting five sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration executed by the parties on the following dates:

Stuart E. Warren - November 3, 1987
Patricia J. Warren - November 3, 1987
Helen Dziedzic - November 3, 1987
Mr. & Mrs. John Abbatiello - October 30, 1987
Don Bellm - November 2, 1987
Henry Borgardt - October 31, 1987
Marion Borgardt - October 31, 1987
Tony Camillo - November 5, 1987
Mr. & Mrs. Giulio Campo - November 2, 1987
Mr. & Mrs. Roger Davidson - December 5, 1987
Frank Fiarito - November 3, 1987
Mr. & Mrs. Theodore Gurdak - November 19, 1987
Roger Johnson - November 2, 1987
Gertrude and Anna Montalbano - October 30, 1987
James Smith - November 2, 1987
John Souter - December 3, 1987
Clarence Waynauskas - December 3, 1987
Thomas McEnaney - December 28, 1987
E.F. Hutton & Co., Inc. - June 17, 1987
Prudential-Bache Securities, Inc. - June 17, 1987

Respondent Charles Greenberg testified at the hearing, was represented by counsel, and is required to submit to Arbitration pursuant to Section 12(a) of the NASD Code of Arbitration Procedure. Claimants, Raymond James, Donald Karner and Vincent O'Donnell submitted to arbitration in their Statement of Claim filed with the NASD on June 15, 1988, by letter to the NASD received February 13, 1990, and were represented by counsel at the hearing.

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The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Amended Statement of Claims of Stuart E. Warren, Jr. and Patricia J. Warren is hereby dismissed and denied in its entirety.

2. Respondents, Prudential-Bache Securities, Inc. and Charles Greenberg are jointly and severally liable for and shall pay the following amounts as damages to:

Helen Dziedzic	\$1,328.60
Henry Borgardt	\$2,000.00
Marion Borgardt	\$2,000.00
Tony Camillo	\$2,200.00
Mr. & Mrs. Givlio Campo	\$2,200.00
Mr. & Mrs. Robert Davidson	\$2,000.00
Frank Fiarito	\$2,000.00
Mr. & Mrs. Theodore Gurdak	\$2,000.00
Roger Johnson	\$4,000.00
Thomas McEnaney	\$4,657.20
James Smith	\$2,000.00
John Souter	\$2,000.00
Clarence Waynauskas	\$2,657.20
Raymond James	\$3,985.80
Donald Karner	\$2,000.00

3. Respondents, E.F. Hutton & Co., Inc. and Charles Greenberg are jointly and severally liable for and shall pay the following amounts as damages to:

Marion Borgardt	\$ 4,038.45
Mr. & Mrs. Robert Davidson	\$ 8,077.90
Frank Fiarito	\$ 8,077.90
Roger Johnson	\$24,233.70
Thomas McEnaney	\$ 8,077.90
James Smith	\$16,155.80

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Mr. & Mrs. John Abbatiello	\$ 4,846.74
Interest	<u>787.56</u>
Total	\$ 5,634.30
Don Bellm	\$ 4,846.74
Interest	<u>787.56</u>
Total	\$ 5,634.30
Gertrude & Anna Montalbano	\$ 4,846.74
Interest	<u>787.56</u>
Total	\$ 5,634.30
Vince O'Donnell	\$ 2,423.37
Interest	<u>393.75</u>
Total	\$ 2,817.12

4. The crossclaims and counterclaims filed by a l l Respondents are hereby dismissed and denied in their entirety;

5. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter; and,

6. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall assess forum fees in the amount of \$4,500.00. The NASD shall retain the filing fee of \$750.00 towards the payment of the forum fee and the remainder shall be divided equally between Respondents E.F. Hutton & Co., Inc. and Prudential-Bache Securities, Inc.

By the Panel

5/25/90