

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitrations Between

TOM and PATRICIA TRUEDSON,

Claimants,

vs.

PRUDENTIAL-BACHE SECURITIES, INC.,
JOHN G. KENNING and JOHN CARPENTER,

Respondents.

)
)
) Case #87-01379
) Amended Award
)

DENNIS DOBES,

Claimant,

vs.

PRUDENTIAL-BACHE SECURITIES, INC.,
JOHN G. KENNING and JOHN CARPENTER,

Respondents.

)
)
) Case #87-01380
) Amended Award
)

STEPHEN and KIM LUMLEY,

Claimants,

vs.

PRUDENTIAL-BACHE SECURITIES, INC.,
JOHN G. KENNING and JOHN CARPENTER,

Respondents.

)
)
) Case #87-01381
) Amended Award
)

Heard before the members of the Arbitration Panel:

Anthony J. Titone, Esq.
Mara Sommers, Esq.
John Darling

CASE SUMMARY

These claims were filed with the NASD, Inc. on July 27, 1987, and were consolidated for hearing by Order of the Panel on August 23, 1989. The hearing was conducted in Fort Lauderdale, Florida on September 21, 1989 with a total of one (1) session.

Claimants, Tom and Patricia Truedson ("Truedson"), Dennis Dobes ("Dobes"), and Stephen and Kim Lumley ("Lumley") alleged that Respondents, John G. Kenning ("Kenning") and John Carpenter ("Carpenter"), while employed at Prudential-Bache Securities, Inc. ("Bache") and Dean Witter Reynolds, Inc. ("DWR"), engaged in a profit sharing scheme whereby they fraudulently offered and sold to the Claimants investments in a discretionary account consisting of certificates of deposit, short

term bonds, or fractional interests in pools of such bonds and CDs; that such investments were made through the personal securities accounts of Kenning and Carpenter at Bache and/or DWR; and, that instead of bonds and CDs, Kenning and Carpenter were trading options and speculative securities in the accounts and lost all of Claimants' monies. Claimants alleged that the conduct of Kenning and Carpenter violated Section 12(1) and (2) of the 1933 Securities Act; Section 517.301, Florida Statutes; constituted civil theft in violation of Sections 812.014 and 772.10, Florida Statutes; violated Section 772.01-04, Florida Statutes; violated 18 U.S.C. 1962 et. seq.; constituted common law fraud; negligent safekeeping and investment of Claimants' assets; negligent hiring by DWR and its agent Richard Frost ("Frost"); negligent supervision by Bache, Dennis Easter ("Easter"), DWR and Frost; negligent retention by DWR and Frost; and, breach of fiduciary duty.

Respondent Bache filed an Answer and Crossclaims against Kenning and Carpenter, but prior to the hearing in this matter settled the claims with the Claimants.

As the result of filing a Voluntary Petition under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. 101 et. seq. in Case No. 89-32855-BKC-TCB, this matter was stayed against Easter and he was removed as a party to these consolidated claims.

DWR and Frost were dismissed with prejudice prior to the hearing of this matter and were removed as parties.

Respondent Kenning filed an Answer and Affirmative Defenses denying all allegations of wrongdoing and asserting the affirmative defenses that Claimants: participated in unlawful usurious transactions; were sophisticated investors who were aware of the risks; ratified and accepted all investments; received monies entitling Kenning to a set-off; and are barred and estopped from bringing this action and have waived any rights and causes of action against Kenning.

Respondent Carpenter did not file an Answer nor appear at the hearing of these matters.

RELIEF REQUESTED

The Truedsons requested damages in the amount of \$25,000.00 plus interest in the amount of \$18,000.00 for a total of \$43,000.00; and, treble damages in the amount of \$75,000.00.

Dobes requested damages in the amount of \$14,465.00 plus interest in the amount of \$10,544.00 for a total of \$25,009.00; and, treble damages in the amount of \$43,395.00.

The Lumleys requested damages in the amount of \$27,900.00 plus interest in the amount of \$20,088.00 for a total of \$47,988.00; and, treble damages in the amount of \$83,700.00.

All Claimants requested interest from the date of the Award; punitive damages of ten times the actual damages; rescission; attorney's fees and costs.

AWARD

On September 21, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Truedson on June 10, 1987; Dobes on June 10, 1987; Lumley on June 1, 1987; and by Respondents Bache on January 5, 1988; Kenning on September 27, 1988; Frost on October 4, 1988; and by DWR on October 14, 1988. While Respondents Easter and Carpenter failed to execute Submission Agreements, as required by Section 12(a) of the Code, the Panel found jurisdiction over Carpenter as set forth in Other Issues, below. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimants have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the Claimants have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, Kenning and Carpenter, are liable, jointly and severally, for violation of Sections 517.301, 517.211, 812.014 and 772.01-.03, Florida Statutes; and shall pay to the Claimants treble damages pursuant to Sections 772.04 and 772.10, Florida Statutes as follows:
 - a. \$51,750.00 to the Truedsons;
 - b. \$29,895.00 to Dobes; and,
 - c. \$68,700.00 to the Lumleys.
3. Claimants' request for attorney's fees and punitive damages are denied in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Claimants are assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars as follows: Truedsons are assessed Three Hundred Thirty Three and 34/100 (\$333.34) Dollars; Dobes is assessed Three Hundred Thirty Three and 33/100 (\$333.33) Dollars; and, Lumleys are assessed Three Hundred Thirty Three and 33/100 (\$333.33) Dollars. The National Association of Securities Dealers, Inc. shall refund One Hundred Sixty Six and 67/100 (\$166.67) Dollars of the respective Claimants' filing fees previously deposited by the Claimants with the NASD, Inc.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

As stated above, Bache settled with the Claimants prior to the hearing of this matter; Easter was removed as a party as a result of his bankruptcy; and Frost and DWR were dismissed with prejudice and removed as parties prior to the hearing of this matter.

Respondents, Kenning and Carpenter, are currently residing at Birmingham D. Federal Prison Camp, Maxwell Air Force Base, Montgomery, Alabama. Kenning was served with the three claims in October 1987 at his then current address, 400 Eldorado Parkway, Plantation, Florida; Carpenter was served at his address of 1401 S. Ocean Boulevard, Boca Raton, Florida. On November 23, 1987, attorney Richard Levenstein filed an Answer on behalf of Kenning. Further notices for Kenning were addressed to his counsel until August 27, 1989, when the NASD, Inc. was notified that said counsel had withdrawn and all further notices were sent to Kenning at his prison address, above.

An overdue notice for Carpenter's Answer was sent by certified mail on January 28, 1988 but returned unclaimed. It was remailed by regular mail on April 11, 1988 and never returned to the NASD. Notice of hearing was sent to Carpenter at his new address 688 Lock Road, Deerfield Beach, Florida on December 9, 1988, by certified mail. Said notice was unclaimed by Carpenter and remailed by regular mail on January 4, 1989, and was never returned to the NASD. Notice of the September 21, 1989 hearing was mailed to both Carpenter and Kenning at Maxwell Air Force Base by certified mail and both receipts were signed by A. Crosby at the prison on March 21, 1989.

The Panel finds, therefore, adequate actual notice to Kenning and Carpenter of the September 21, 1989 hearing.

The Panel finds jurisdiction of Carpenter by virtue of his NASD membership at the time alleged in the Claim, Section 12(a) of the Code, as well as his execution of Form U-4 with both DWR and Bache.

ARBITRATORS CONCURRING

Anthony J. Titone Esq., Mara Sommers Esq., and John Darling

ARBITRATOR DISSENTING

While arbitrator Sommers concurred fully in the decision of this matter, she hereby dissents from the method of calculation and the amount of damages due to the Claimants.

Mara Sommers, Esq.

Dated: December 18, 1989