

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between

Brent and Teri Longnecker

Claimant

v.

Prudential Bache Securities, Inc.

Frank J. Schmitt

Respondents

NASD No. 88-00159

CASE SUMMARY

In a claim filed with the NASD on January 19, 1988, Claimants Brent and Teri Longnecker ("the Longnecker's") alleged that Respondents Prudential Bache Securities, Inc. ("Prudential Bache") and Frank J. Schmitt ("Schmitt") engaged in unsuitable trading in index options and failed to properly supervise and manage the Longnecker's securities account opened and maintained at Prudential Bache. Schmitt also allegedly misrepresented the risk associated with trading index options as a high yield program with low risk and that protective measures could be taken to insure against losses in their account. Additionally, Prudential Bache and Schmitt allegedly executed unauthorized trades in and for the Longnecker's account.

Prudential Bache and Schmitt denied that any misrepresentations were made to the Longnecker's, alleged that Mr. Longnecker had considerable option trading experience, and that the Longnecker's were sophisticated, knowledgeable investors who understood that substantial losses could be incurred in the options trading which was undertaken in their account. Prudential Bache and Schmitt also alleged that the losses incurred by the Longnecker's were due to market activity and denied that there were any unauthorized trades made in the Longnecker's account. Prudential Bache and Schmitt asserted that the Texas Deceptive Trade Practices Act was inapplicable to the instant case and there was therefore, no cause of action under this statute. Additionally, Prudential Bache asserted certain affirmative defenses to the claim including but not limited to estoppel, ratification and laches.

Prudential Bache and Schmitt asserted a Counter-claim against the Longnecker's for a debit balance which occurred in their account at the end of September 1986. The Longnecker's denied that any amount of money was owed Prudential Bache and asserted that the losses in the account were due to Schmitt's failure to manage the amount as he promised and Prudential Bache's failure to properly supervise Schmitt with respect to the suitability of the trading program implemented for the Longnecker account.

RELIEF REQUESTED

The Longnecker's requested restitution of all losses suffered in their account, and treble damages under the Texas Deceptive Trade Practices Act. Prudential Bache and Schmitt requested dismissal of the claim and an award of damages on their counterclaim of \$103,801.80 plus accrued interest and attorney's fees. The Longnecker's requested dismissal of the counterclaim in its entirety.

AWARD

On Wednesday, October 25, 1989 and Thursday, October 26, 1989 in Dallas, Texas during a hearing lasting three sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 2, 1988, by Claimants Brent and Teri Longnecker on April 11, 1988 by William N. Hayes on behalf of Respondent Prudential Bache Securities, Inc. and on April 11, 1988 by Respondent Frank J. Schmitt.

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:

LONGNECKER CLAIM

1. Prudential Bache and Schmitt are jointly and severally liable for and shall pay to Brent and Teri Longnecker, jointly, the sum of Twenty-four Thousand Eighty-three Dollars and Eighty-nine cents (\$24,083.89);

2. No treble damages are awarded to the Longnecker's under the Texas Deceptive Trade Practices Act and this claim shall be and is hereby dismissed in its entirety;

PRUDENTIAL BACHE COUNTERCLAIM

3. The counterclaim asserted against Teri Longnecker by Prudential Bache shall be and is hereby dismissed in its entirety;

4. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the 1,000.00 filing fee previously deposited with the NASD by the Claimants and Prudential Bache is assessed and shall pay to the NASD as additional forum fees, the sum of \$2,000.00. No additional forum fees are assessed against Schmitt.

BY THE PANEL

Dated: 12-1-89

S/SJoe B. Abbey, Esq.
Presiding Chair

Dated: 12-3-89

S/SWalter S. Henrion

Dated:

S/SHarold L. Sutherland

Dated: 12-11-89

S/SRobert A. Roberts

Dated: 12-1-89

S/SFrank B. Merchant

Date Served: 12-20-89

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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BRENT & TERI LONGNECKER

Claimants

v.

PRUDENTIAL BACHE SECURITIES, INC.

and FRANK J. SCHMITT

Respondents

DISCIPLINARY REFERRAL
NASD No. 88-00159

The undersigned arbitrators hereby request the appropriate Surveillance Department of the NASD to investigate and ascertain whether adequate supervisory measures were employed by Charles Gross and Prudential Bache Securities, Inc. in connection with suitability review of index option trading undertaken on behalf of the clients of registered representative Frank J. Schmitt.

BY THE PANEL

Dated: 12-1-89

S/S Joe B. Abbey, Esq.
Presiding Chair

Dated: 12-3-89

S/SMr. Walter S. Henrion

Dated:

S/SMr. Harold L. Sutherland

Dated: 12-11-89

S/SMr. Robert A. Roberts

Dated: 12-1-89

S/SMr. Frank B. Merchant