

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
VIRGINIA SHAW and ETHEL L. A. PHILLIPS,)
) Claimants,)
) Case #88-01860
vs.) Award
)
PRUDENTIAL-BACHE SECURITIES, INC.,)
)
BRUCE A. OLIVER, and WILLIAM C. MITCHELL.)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Nancy C. Wear, Esq.
S. Richard Savage

CASE SUMMARY

This claim was filed with the NASD, Inc. on June 6, 1988. The hearing was conducted in Fort Lauderdale, Florida on September 27, and October 18, 1989, with a total of four (4) sessions.

Claimants Ethel L. A. Phillips ("Phillips") and Virginia Shaw ("Shaw") alleged that they have little investment experience; that they opened accounts at Respondent Prudential-Bache Securities, Inc. ("Bache") where Bruce A. Oliver ("Oliver") served as account executive and William C. Mitchell ("Mitchell") was office manager and supervisor of Oliver. Claimants alleged that at Oliver's suggestion, they opened investment and options accounts; granted power of attorney to Patricia Mackzum; that they have limited funds; were induced to engage in highly speculative trading; were not advised of the risks; that Respondents made misrepresentations of material facts; omitted to state material facts and that the trades in Claimants' account were unsuitable in light of their expressed investment objectives. Claimants alleged that the Respondents' conduct violated Sections 12(1) and (2) of the 1933 Securities Act; Section 517.301, Florida Statutes; Sections 812.014 and 772.10, Florida Statutes (Civil Theft); Section 772.01-04, Florida Statutes (Florida Rico); Title 18 U.S.C. Section 1962, et. seq. (Federal RICO); constituted common law fraud; negligence; negligent hiring; negligent supervision; negligent retention; and breach of fiduciary duty through which Claimants suffered a loss.

Respondents denied all allegations of wrongdoing; denied unauthorized or unsuitable trading; alleged that Claimants authorized all trades; and, that the accounts were managed in accord with all industry regulations and standards.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$21,675.00; interest; treble damages for RICO and Civil Theft claims; punitive damages of ten (10) times the actual damages sustained; rescission; attorney's fees and costs. Respondents requested dismissal of the claim and costs.

AWARD

On September 27, and October 18, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on June 2, 1988, and by Respondents Bache on August 10, 1989; Oliver on August 31, 1989; and Mitchell on August 16, 1989. 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 parties 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 parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents are hereby liable, jointly and severally, and shall pay to Claimants the amount of Twenty Nine Thousand Two Hundred Eighty Three and 70/100 (\$29,283.70) Dollars inclusive of interest.
3. Respondents are hereby liable, jointly and severally, and shall pay to Claimants the further amount of Eleven Thousand Ninety Four and 28/100 (\$11,094.28) Dollars for costs and attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Claimants are assessed forum fees in the amount Three Thousand and 00/100 (\$3,000.00) Dollars (\$750 x four sessions). The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimants in partial satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

William A. Fleck Esq., Nancy C. Wear Esq. and S. Richard Savage.

Dated this 26th day of October 1989.