

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Anne Zajac

Claimant

and

Merrill Lynch Pierce Fenner & Smith, Inc.;
Prudential Bache Securities, Inc.

Respondent(s)

AWARD
Case No. 88-01918

CASE SUMMARY

Anne Zajac, Claimant, alleges that Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent Merrill") and Prudential Bache Securities, Inc. ("Respondent Bache") purchased and sold stock and options, including puts and calls, without authorization from the Claimant. The Claimant alleges that she relied on the Respondents and the Respondents knew that she relied on the Respondents for all investment decisions. Claimant further alleges that her accounts at both Respondents' firms were handled as discretionary accounts without following the special internal procedures regarding such accounts. Neither account allegedly had appropriate discretionary documents prepared or executed. Both Respondents allegedly knew or should have known of the age, education, business experience and investment objectives of the Claimant. Claimant alleges that the account was churned.

Claimant alleges that both Respondents directed that an option account be opened with the signing of an option agreement by Claimant. Subsequent trading in options allegedly was not suitable for Claimant in that the Respondents did not make a sufficient inquiry or investigation into the investment objectives and needs of the Claimant. Further, both Respondents misrepresented the risks involved in trading options.

Claimant further alleges violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Section 1961 et seq., 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder, as well as violation of SEC Rule 15(c) 1-7(a). Furthermore, Claimant alleges breach of fiduciary duty, common law, negligence, gross negligence and fraud, as well as violations of rules of various self-regulatory organizations.

Respondent Merrill generally denies each and every allegation of wrongdoing and liability set forth in the Statement of Claim. Specifically, Respondent Merrill alleges that all trades were authorized and ratified by the Claimant, that the account was not churned, and that all transactions recommended to Claimant were suitable based on the stated investment objectives.

Respondent Bache generally denies the allegations set forth in the Statement of Claim. Specifically, Respondent Bache denies the allegations of churning, unauthorized trading, and violation of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C., Section 1961, et seq. Affirmatively, Respondent Bache states that the Claimant has failed to state a claim upon which relief can be granted. Further, Respondent Bache asserts that the Claimant authorized and ratified all transactions in the account. The statement of claim is barred by the doctrines of equitable estoppel and waiver. Furthermore, Respondent Bache affirmatively states that Claimant failed to mitigate any losses and is therefore barred from recovery. Respondent Bache asserts that the Claimant was contributorily negligent, or in the alternative, a comparative basis should be utilized to apportion any damages if found ultimately liable.

RELIEF REQUESTED

Claimant requests damages in the amount of \$250,000 plus interest against Respondent Merrill. Claimant requests damages in the amount of \$380,000 against Respondent Bache. Further, Claimant requests all costs including attorney's fees and arbitration fees and any other amounts deemed just and proper.

Respondent Merrill requests that the claim be dismissed and that the costs of this proceeding be assessed against the Claimant.

Respondent Bache requests that the claim be dismissed and that the costs, including attorney's fees and arbitration fees be assessed against the Claimant.

AWARD

On December 18, 1989, January 4 and 5, 1990 in Detroit, Michigan during a hearing lasting six sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 10, 1988 by Claimant Anne Zajac, on August 12, 1988 by Dennis M. Pape, Vice President and Senior Counsel on behalf of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. and on July 26, 1988 by Marguerite E.H. Morrison, Vice President and Assistant General Counsel on behalf of Respondent Prudential Bache, Inc.

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. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable for and shall pay to Claimant Anne Zajac the sum of Eighteen Thousand Eight Hundred Twenty-Five Dollars and Twenty-Eight Cents (\$18,825.28);

2. Respondent Prudential Bache Securities, Inc. is liable for and shall pay to Claimant Anne Zajac the sum of Four Thousand Five Hundred Seventy-Two Dollars and Twenty-Three Cents (\$4,572.23);

3. The parties will each bear any other costs and expenses not specified herein which were incurred in this matter; and

4. 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 of which \$750.00 was previously deposited with the NASD by the Claimant Anne Zajac. Claimant shall pay to the NASD the balance due of \$250.00.

By the Panel

Dated: 3/30/90 /s/ JAMES C. STEFFL
Presiding Chair

Dated: 3/26/90 /s/ NORMAN BRISTOL

Dated: 3/27/90 /s/ LARRY C. KREUL

DATE SERVED: 4/12/90