

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of the Arbitration Between

Ivor A. Emanuel, M.D.,  
Phyllis Emanuel, John A. T.  
Ross, M.D., and John A. T.  
Ross, M.D., a Professional Corp.

VS.

Jack Clauson, Prudential-Bache  
Securities, Inc. and Sutro &  
Company, Inc. Respondents

**AWARD**

CASE NO. 88-02257

## SUMMARY OF ISSUES

This case was filed on July 15, 1988. Claimants alleged lack of suitability, unauthorized investing into high-risk, speculative issues, negligence, fraud, breach of covenant of good faith and fair dealing implied by law in all contracts and breach of fiduciary duty.

Respondents Prudential-Bache Securities, Inc. ("Pru-Bache") and Jack Clauson ("Clauson") alleged the following: Claimants were fully informed of investments, were continuously updated, never lodged any complaints, were intricately involved in managing the accounts on a day-to-day basis and ratification of all transactions, as well as the following affirmative defenses: 1) failure to state facts sufficient to constitute causes of action; 2) approval, authorization and/or ratification of the acts and transactions; 3) losses caused were proximately caused by Claimants' conduct; 4) laches; 5) assumption of risks; 6) failure to mitigate damages; 7) waiver; 8) comparative negligence; 9) claims barred by doctrine of "in pari delicto and unclean hands"; and 10) Claimants not entitled to recover punitive damages or damages for emotional distress.

Respondent Sutro & Co., Inc. ("Sutro") generally denied each and every substantive allegation of Claimants and settled the claim against it prior to the arbitration.

### DAMAGES AND RELIEF REQUESTED

1. Claimants requested the following compensatory damages:
  - A. Ivor and Phyllis Emanuel, \$2,095.00, withdrawn at the hearing;
  - B. Ivor Emanuel (separate property), \$26,276.00, amended at the hearing to \$18,775.00;
  - C. Leonard and Yetta Emanuel, \$16,495.00, amended at the hearing to \$8,016.00;

- D. Lillian Rosenblum and Phyllis Emanuel, \$6,102.00, withdrawn at the hearing;
  - E. Ivor Emanuel (Keogh Plan), \$3,021.00, amended at the hearing to \$6,489.00;
  - F. Ross and Emanuel, Inc. Pension Plan, \$57,313.00 and Ross and Emanuel, Inc. Profit Sharing Plan, \$100,960.00, consolidated and amended at hearing to \$113,362.00 or \$88,544.00, depending on how damages measured.
- 2. Damages for emotional distress.
  - 3. Interest.
  - 4. Punitive damages.

#### DAMAGES AND RELIEF AWARDED

On May 22 and 23, 1990 in San Francisco, California, the undersigned arbitrators heard the controversy in four sessions between the parties as set forth in submissions to arbitration signed by Claimants Ivor Emanuel on June 28, 1988, John Ross on June 21, 1988, John A. T. Ross, M.D., A Professional Corporation on June 21, 1988. Phyllis Emanuel and Lillian Rosenblum did not file submission agreements and their claims were withdrawn by counsel by his letter to the National Association of Securities Dealers, Inc. ("NASD") of April 18, 1989. Leonard and Yetta Emanuel submitted to the jurisdiction of the NASD through counsel and forwarded a written submission dated May 25, 1990. Submission agreements were executed by Respondents Sutro & Co., Inc. on August 16, 1989, Prudential-Bache Securities, Inc. on August 18, 1989 and Jack Clauson on August 17, 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. Each and every claim is dismissed.
- 2. The claim for punitive damages is dismissed.
- 3. The parties shall each bear their respective costs including attorneys' fees.
- 4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimants. Also in accordance with Section 43, the arbitrators assess forum fees as follows:
  - a. against Claimants, jointly and severally, \$1,500.00, payable to the National Association of Securities,

Dealers, Inc., reduced by the \$750.00 filing fee already paid; and

- b. against Respondents, jointly and severally, \$1,500.00, payable to the National Association of Securities Dealers, Inc.

PRESIDING ARBITRATORS

DATE SERVED: 06/08/90

  
Mario Henry Barsotti

Dealers, Inc., reduced by the \$750.00 filing fee already paid; and

- b. against Respondents, jointly and severally, \$1,500.00, payable to the National Association of Securities Dealers, Inc.

DATE SERVED: 06/06/90

  
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William G. McCollom

Dealers, Inc., reduced by the \$750.00 filing fee already paid; and

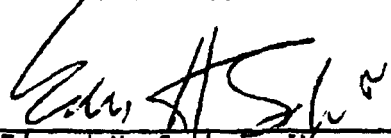
- b. against Respondents, jointly and severally, \$1,500.00, payable to the National Association of Securities Dealers, Inc.

PRESIDING ARBITRATORS

DATE SERVED: 06/08/90

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Mario Henry Barsotti

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William G. McCollom

  
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Edward H. Sanborn IV