

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

JOHN M. AND NANCY A. KINSEY,

Claimants

and

STEPHEN N. JOHNSON; MICHAEL FEARNOW;
ART PORCARI; PRUDENTIAL-BACHE SECURITIES,
INC.; AND IBS TECHNOLOGIES

Respondents

CASE NO. 88-02341

CASE SUMMARY

In their claim filed with the NASD on or about July 21, 1988, Claimants John M. Kinsey and Nancy A. Kinsey (collectively as "Claimants") alleged that Respondents Stephen N. Johnson ("Johnson"); Michael Fearnow ("Fearnow"); Art Porcari ("Porcari"); Prudential-Bache Securities, Inc. ("Pru-Bache"); and IBS Technologies executed an unauthorized transaction in the purchase of shares of stock and warrants issued by IBS Technologies. Claimants further allege that certain account documents were not properly executed by Claimant Nancy A. Kinsey.

In their joint answer filed with the NASD on or about January 1, 1989, Respondents Fearnow and Porcari stated that the Claimants initiated the transaction in question and denied that the transaction was unauthorized.

In his answer filed with the NASD on or about February 10, 1989, Respondent Johnson stated that the transaction was authorized.

In its answer filed with the NASD on or about September 26, 1988, Respondent Pru-Bache denied any liability for the transaction in question since it had a contractual arrangement of clearing services for ~~brokerage~~ house with Porcari, Fearnow and Associates.

PROCEDURAL SUMMARY

Respondent Pru-Bache was dismissed from this proceeding by agreement between Claimants and Respondent Pru-Bache.

Respondent IBS Technologies refused to submit to arbitration.

At the commencement of the hearing on Monday, March 19, 1990, Benjamin Best, attorney for Claimants, presented a motion for postponement. The basis for this request was that his clients were not present at the commencement of the hearing and would not be able to attend. The motion was objected to by

Respondent Johnson and counsel for Respondents Fearnow and Porcari. The arbitrator granted Mr. Best a recess to allow him an opportunity to contact his clients to ascertain their availability and the reason that they were unable to appear as scheduled.

After the recess, Mr. Best advised the arbitrator that Mr. Kinsey was unable to appear due to infected and bleeding toes, a condition for which he had a doctors appointment scheduled for Friday, March 23, 1990 and a degenerative disc, a condition for which he had a separate doctors appointment at an unspecified date and time. Mr. Best further advised the arbitrators that Mrs. Kinsey had taken a sick child to the doctors office.

The arbitrator denied the request for a postponement, whereupon, Mr. Best presented evidence on behalf of the Claimants.

Upon the conclusion of Mr. Best's presentation of evidence, Respondents Fearnow and Porcari presented a motion to dismiss the Statement of Claim due to lack of proof. The arbitrator took the motion under advisement.

RELIEF REQUESTED

Claimants requested an award in the amount of \$5,600.00, attorneys' fees and interest.

Respondents Fearnow and Porcari requested that the Statement of Claim be denied.

Respondent Johnson requested that the Statement of Claim be denied.

AWARD

On Monday, March 19, 1990 in Houston, Texas during a hearing lasting one (1) session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on July 11, 1988 by Claimants John M. Kinsey and Nancy A. Kinsey on, September 23, 1988 by Kenneth E. Meister on behalf of Respondent Prudential-Bache Securities, Inc. and on February 6, 1989 by Respondent Stephen N. Johnson.

Respondents Michael Fearnow and Art Porcari have not properly executed submissions to arbitration they are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and are bound by the panel's final determination on all issues submitted.

The arbitrator, 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. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;

2. Each party shall bear its own costs and expenses and specifically enumerated herein including attorneys' fees; and

3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$200.00 filing fee previously deposited with the NASD by the Claimants Joan M. and Nancy A. Kinsey.

By the Panel

Dated: 03/19/90

/S/ Robert E. Morse, Jr.
Presiding Chair

Date Served: 5-30-90