

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Stanley & Sally Mayper,
Trustees of the Stanley
Sally Mayper Trust
Dated 7/31/92

Claimants

AWARD

vs.

NASD #88-02919

Prudential-Bache Securities
Marvin Friedman

Respondents

REPRESENTATION

Claimants were represented by John S. Huiskamp, Esq. of Duke, Gerstel, Shearer & Bregante, San Diego, California. Respondent Prudential-Bache Securities was represented by Martin Hunger, Esq. of Prudential Securities, Inc., New York, New York. Respondent Marvin Friedman was represented at the hearing on June 5, 1991, by Richard Bryson, Esq. of San Diego, California, for purposes of requesting a continuance. At all other times, Respondent Friedman was represented by Daniel T. Mazzella, Esq. of San Diego, California.

SUMMARY OF ISSUES

Claimants further alleged that Marvin Friedman failed to execute express instructions to terminate all options positions on October 16, 1987. Claimants further alleged unauthorized liquidation of 3122 shares of Sears common stock on October 19, 1987 by Prudential-Bache to meet a margin call that was not due until October 21, 1987. Claimants alleged these actions constituted breach of contract, breach of fiduciary duty, conversion and negligence.

Respondent Prudential-Bache denied all allegations as well as liability to Claimants based on the fact that Prudential-Bache acted only as clearing agent for the firm in which the Claimants' account was held. Prudential-Bache asserted that it extended credit to the Claimants through their margin account, it was fully within its rights under the margin agreement to liquidate the Sears stock in time to cover the margin call.

Respondent Friedman denied all allegations and liability to Claimants, and asserted that a transfer to Mr. Friedman's firm of an account held by Claimants at Sutro was cancelled by Mr. Mayper, resulting in the uncovered margin call. Respondent Friedman asserted a counterclaim against the Maypers for the debit balance left in Claimants' account, which amount Mr. Friedman was obligated to pay to Prudential-Bache under the terms of the clearing agreement.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of approximately \$100,000, plus pre-judgment interest, punitive damages, attorney's fees and costs.

Respondent Prudential-Bache requested dismissal of all claims. Respondent Marvin Friedman requested dismissal of all claims, and an award of \$12,000 on the counterclaim.

PROCEDURAL SUMMARY

This claim was initially filed in the Superior Court of San Diego, California, Case No. 598986, on or about June 10, 1988. The parties entered into a Stipulation and Order Re: Binding Arbitration, filed October 11, 1988. This claim was then filed with the NASD on September 16, 1988. A hearing lasting one (1) session was convened in San Diego, California, on May 10, 1990 under the jurisdiction of an arbitration panel composed of William R. Newsome, Kenneth J. Gross and Diana G. Davis. At that time, Claimants refused to proceed because of procedural objections to the replacement for cause of a previous panelist. The hearing was adjourned to permit Claimants to obtain injunctive relief through the Superior Court of San Diego, County, Case No. 598986. Upon Order of the Court dated March 11, 1991, denying the Motion for Preliminary Injunction and removing the Temporary Restraining Order issued January 22, 1991, the case was again set for hearing by the NASD. On June 5, 1991, a hearing lasting one (1) session was convened in San Diego, California. An unopposed motion for continuance made by counsel for Respondent Friedman was granted and the hearing was adjourned for until June 6, 1991.

DAMAGES AND RELIEF AWARDED

On June 6, 1991, the undersigned arbitrators heard the controversy between the parties pursuant to submissions to arbitration signed by Claimants on August 18, 1988, by an authorized representative of Prudential-Bache on May 11, 1989 and by Marvin Friedman on May 9, 1989. The evidentiary hearing was conducted in San Diego, California and lasted two (2) sessions.

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 as follows:

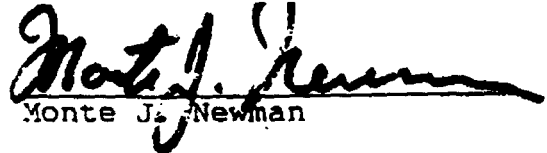
1. All claims brought by Claimants are dismissed.
2. The claim for punitive damages is dismissed.
3. Claimants Stanley and Sally Mayper are liable for and shall pay to Marvin Friedman the sum of \$8,176.09 on the counter-claim for the debit balance.
4. The parties shall each bear their respective costs including attorneys' fees.
5. 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 Claimant. Claimants are assessed additional forum fees of \$1,500.00, payable to the NASD.

OTHER ISSUES

None.

UNG

DATE SERVED: 06/21/91


Monte J. Newman