

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

John O. and Mary A. Turner

Claimants

and

Prudential Bache Securities, Inc.;
Joseph V. Palmer

Respondents

A W A R D
88-03351

CASE SUMMARY

In a claim filed with the NASD on October 31, 1988, Claimants John and Mary Turner ("the Turners") alleged that Respondents Prudential Bache Securities, Inc. ("Prudential Bache") and Joseph Palmer ("Palmer") executed a sell order of 1500 shares of Institute of Clinical Pharmacology ("ICP") at 13 on Monday morning April 27, 1987. The Turners maintained that Palmer called them on Thursday morning April 23, 1987 and indicated that they should sell the shares. The price quoted for ICP was 15 1/4. The Turners agreed to sell their stock. No confirmation of the sale was given the Turners until Monday morning, April 27, 1987, at which time Palmer advised that the order was executed at \$13 per share. Palmer allegedly stated in the phone conversation on Monday morning that he had "made a mistake".

Prudential Bache and Palmer maintained that no guarantee was given the Turners that the sale would be executed at \$15 1/4 or \$15 per share. ICP was a volatile stock which was trading in the \$14-15 range. Day orders were placed on both April 23 and April 24, 1987 at the price of \$15. Neither of these orders filled. On Monday, April 27, 1987, a market order was placed which filled at \$13 per share. Palmer communicated this to Turner but denied that he said he "made a mistake".

RELIEF REQUESTED

The Turners asked for \$3,000 which was the \$2.00 per share difference between the actual \$13 per share sale price and the \$15 1/4 per share price the Turners alleged should have been the sale price. Prudential Bache and Palmer requested dismissal of the claim in its entirety.

Served August 13, 1989

OTHER ISSUES

As a preliminary matter, Prudential-Bache and Palmer, through counsel, had argued that the Turners amended their claim at the hearing from an alleged failure to sell ICP at a higher price than that at which it was actually sold, to a claim alleging an unauthorized sale of ICP at \$13 per share. The arbitrator heard the parties on this issue and determined, after taking this matter under advisement, that this was not an amendment to the claim.

AWARD

On July 11, 1989 in Scottsdale, Arizona, during a hearing lasting one session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on October 27, 1988 by Claimants John and Mary Turner, on March 3, 1989 by Marguerite E.H. Morrison, Vice President and Assistant General Counsel on behalf of Respondent Prudential Bache Securities, Inc. and on March 2, 1989 by Respondent Joseph P. Palmer.

As the arbitrator appointed to resolve the instant dispute, I have considered the pleadings, the testimony, and the evidence presented at the hearing and have decided in full and final resolution of the issues submitted for determination as follows:

1. Prudential Bache is liable for and shall pay to the Turners, jointly, the sum of Two Thousand Eight Hundred Thirty Two Dollars and Fifty Two Cents (\$2,832.52);
2. Palmer is liable for and shall pay to Claimants, jointly, the sum of \$167.48;
3. The parties shall each bear their respective costs and expenses including any attorneys' fees 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 \$100 filing fee previously deposited with the NASD by the Turners.

By the Panel

Dated:

August 7, 1989

/s/

Pamela T. Johnson
Pamela T. Johnson, Esq.
Presiding Chairman