

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Chayn Mousa

89-00950

Name of Respondent(s)

Prudential-Bache Securities Inc.
Sam Lewis
Fred Mecklenburg

CASE SUMMARY

In a Statement of Claim filed with the NASD on March 29, 1989, Claimant Chayn Mousa alleged that Respondent Lewis convinced Claimant to open a securities account with Respondent Prudential-Bache in August of 1986 and to commence trading in "OEX" put and call options on Respondent Lewis' recommendations without interviewing Claimant as to his market sophistication and explaining the risks to him. Claimant further alleged that in January of 1987, Respondents refused to allow the execution of hedging strategies and effect the repurchase of March calls, misrepresented the trading in Claimant's account, and unilaterally altered the margin payment rules by insisting on an unreasonably short period of time and manner of payment in the making of margin calls. In addition, Claimant alleged that Respondents Mecklenburg and/or Prudential-Bache failed to properly supervise the actions of Respondent Lewis. Claimant alleged violation of the Federal Securities Law, violation of the Texas Securities Act and the Texas Business and Commercial Code, common law fraud, conversion, breach of contract, negligence, breach of fiduciary duty, conspiracy, and violation of the NASD Rules of Fair Practice as they establish a standard of care.

In a Statement of Answer and Counterclaim filed with the NASD on July 25, 1989, Respondents Prudential-Bache Securities, Inc., Samuel Lewis and Fred Mecklenburg denied each and every allegation in Claimant's Statement of Claim. Respondent alleged that: 1) Claimant told Respondent Lewis his financial information and trading history and certified to its accuracy; 2) Claimant became proficient in the trades and made unsolicited trades; 3) Claimant refused to accept Respondents advice to reduce his positions in order to lessen the risk as the market moved against his positions; 4) Claimant was aware of the risks and acknowledged in January of 1987 that he understood the risk, took responsibility for the risk and was financially

able to afford the risks his positions involved. Respondent's Counterclaim alleged that Claimant's allegations are knowingly false and that Respondents have incurred substantial litigation costs as a result of these false allegations.

In a Reply to the Counterclaim filed on August 29, 1989, Claimant denied the allegations of the Counterclaim, alleging the Respondents' admitted several allegations in the Statement of Claim, and therefore, the allegations contained therein cannot be viewed as baseless.

RELIEF REQUESTED

Claimant Chayn Mousa requested entry of an award against Respondent's in the amount of \$285,000.00, damages of twice the amount of actual damages pursuant to the Texas Business & Commercial Code and common law actions, attorneys' fees and the costs of arbitration. In addition, Claimant requested that Respondents' Counterclaim be dismissed.

Respondents Prudential-Bache Securities, Inc., Fred Mecklenburg and Samuel D. Lewis requested that Claimant's Statement of Claim be dismissed and that an award be entered on the Counterclaim requiring Claimant to pay all of Respondent's costs and attorneys' fees.

AWARD

One December 12, 1990 in Houston, Texas during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 9, 1988 by Claimant Chayn Mousa, on July 24, 1989 by Steven J. Metz on behalf of Respondent Prudential-Bache Securities, Inc., on July 27, 1989 by Respondent Fred Mecklenburg, and on August 4, 1989 by Respondent Sam D. Lewis.

At the close of the hearing on December 12, 1990, both parties agreed that the Panel may either execute a handwritten copy of the Award or each arbitrator may execute a counterpart copy of the award and that a typed, conformed copy of the award would be forwarded to the parties.

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 to arbitration as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The Respondent's Counterclaim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own respective costs, including attorneys' fees, except for those specifically enumerated herein.
4. Pursuant to Section 43(C) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$250.00 filing fee and \$750.00 hearing deposit previously deposited with the NASD by the Claimant Chayn Mousa. Claimant Chayn

Mousa is liable for and shall pay additional forum fees to the NASD of \$125.00. Respondent Prudential-Bache Securities, Inc. is liable for and shall pay to the NASD additional forum fees of \$1,125.00.

Arbitrator(s) Signature

Dated: December 12, 1990

Michael E. McGown

Richard A. Hollenberg

Gary L. Wood