

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	:
	:
Anthony J. & Rose Taranto	:
	:
Claimants	:
vs.	:
	:
Prudential-Bache Securities, Inc.	:
Richard Porco	:
Respondents	:
	:

AWARD

#89-01728

Case Summary

Claimants Anthony J. & Rose Taranto alleged that on December 22, 1988 Mr. Taranto asked Respondent's financial advisor Richard Porco to sell all positions in their account which would realize a loss for the tax year 1988, which they wanted to use of offset capital gains realized upon the sale of a business. Porco, who had recently replaced Claimants' prior advisor, allegedly said as to the security in issue - Prudential-Bache Growth Opportunity Mutual Fund - that he would have to research the position to see if there was a loss, and if so to sell. Claimants alleged Porco sold and realized a gain of \$8,400.00, and they wish this sale to be rescinded and that Respondent firm be directed to send an appropriate explanatory letter to the Internal Revenue Service. At the hearing, Claimants recognized that this relief may not be practicable, and alternatively requested appropriate damages. Claimants were also allowed to amend their prayer for relief so as to request costs.

Respondents Prudential-Bache Securities, Inc. and Richard Porco alleged that while Porco was told Claimants wished to realize losses, that since Porco was a new advisor, he could not determine Claimants cost basis before the end of the year because of the nature of the security involved in this case, and the number of years which would have to be searched, and the fact that necessary files were warehoused. Respondents alleged that Anthony Taranto then gave Porco a firm order to sell.

Relief Requested

Claimants' requested a rescission of the trade and reinstatement of Claimants' position as of the time of the sale at no cost to the Claimants and damages as the arbitrator finds appropriate.

Respondents requested that Claimants' claim be denied in all respects.

Arbitrator's Findings

The question is purely one of fact. I find that Porco had no motive favorable to himself or adverse to Claimants to make the trade in question, commissions being earned (by the original broker) in this trade only on acquisition of fund securities and not on the sale thereof. I find also that December 22nd was the last day that a trade could be made which would be of benefit to Claimants' taxwise, in the manner they desired, and that under the circumstances - especially considering the increased amount of work at brokerage houses at the end of any tax year - it would have meant heroic efforts to have even attempted to discover Claimants' tax basis for the securities in question, and thus whether it would be beneficial to Claimants to sell. I find that under these circumstances, Respondents version of what occurred as to the securities in issue is the more credible. As to other securities as to which it was not as difficult to determine cost basis, there is no dispute.

Award

On January 17, 1990 at the NASD Office in New York, New York, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Anthony J. & Rose Taranto on June 6, 1989, by Respondent Prudential-Bache Securities, Inc. on August 14, 1989 and by Respondent Richard Porco on August 17, 1989. The initial claim was filed on June 13, 1989. The arbitrator, 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. That the Claimants' claim is dismissed in all respects.
2. The parties shall each bear their respective costs including attorney fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 filing fee previously deposited by the Claimant as costs of the double hearing session conducted in this matter.

CONCURRING ARBITRATOR

Martin Fogelman