

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Randall Lee Phillips

89-03171

Name of Respondents

Prudential-Bache Securities, Inc.
and J. Frederic Storaska

REPRESENTATION

Claimant was represented by Paul C. Ney, Esq. of Doramus & Trauger, Nashville, Tennessee.

Respondents were represented by Noah Sorkin, Esq. of Prudential Securities, New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant, Randall Lee Phillips on November 14, 1989.

Claimant, Randall Lee Phillips' Submission Agreement was signed on November 1, 1989.

The Joint Statement of Answer and Counterclaim was filed by Respondents, Prudential Bache Securities, Inc. and J. Frederic Storaska on February 2, 1990.

Respondent, Prudential Bache's Submission Agreement was signed on February 1, 1990 and Respondent, J. Frederic Storaska's Submission Agreement was signed on June 20, 1990.

HEARING INFORMATION

The hearing occurred on January 7, 1992 for 2 sessions, January 8, 1992 for 2 sessions and January 9, 1992 for two sessions.

The hearing location was Nashville, Tennessee.

CASE SUMMARY

Claimant, Randall Lee Phillips ("Phillips") alleged that Respondents, Prudential Bache Securities, Inc. n/k/a Prudential Securities, Inc. ("Prudential") and J. Frederic Storaska ("Storaska") violated Section 10-b and Rule 10b-5 promulgated thereunder, of the Securities Exchange Act of 1934, Section 12(2) and Section 15 of the Securities Act of 1933, engaged in churning, breached their contractual obligations to Phillips, violated the know your customer rule of the NYSE, violated the suitability rule of the NASD and violated common law through negligent misrepresentation, fraud, and breach of fiduciary duty. Additionally, the Phillips' allegations included breach of the State Securities laws of Texas, Tennessee and New York.

Phillips alleged that Prudential and Storaska failed to ascertain Phillips' investment experience and investment objectives; placed him in unsuitable investments; purchased securities for Phillips' account without the authority or consent of Phillips; failed to provide Phillips with adequate and material information concerning potential investments; misled Phillips, either intentionally or negligently, as to the merits and risks of investments; failed to provide Phillips prompt access to his funds; failed to exercise due care in executing orders; executed unauthorized trades; churned Phillips' account and breached their fiduciary duties to Phillips. Each of the foregoing claims were supported by allegations that Phillips was an inexperienced investor who relied on Storaska's representations that he was the "king of conservative portfolio managers". Storaska allegedly advised Phillips that he was able to guarantee substantially below average commissions. Phillips alleged that certain transactions in his account were unauthorized or authorized only on the basis of misleading information provided to Phillips by Storaska and Prudential. Among the transactions at issue were the purchases of FNN Composite Call Options, Prudential-Bache proprietary limited partnerships and Pruco Life Discovery Annuities for Phillips' securities account maintained at Prudential.

Prudential and Storaska denied the allegations of the claim. Prudential and Storaska alleged that Phillips opened his account in May of 1987, established a diversified portfolio of investments and suffered some losses during the worst decline of the stock market in history five months later. Prudential and Storaska alleged that prior to opening a securities account for Phillips, Storaska flew to Nashville to meet with Phillips and his attorney and accountant. The types of investments and Phillips' investment objectives were discussed with these individuals and thereafter copies of the confirmations slips, monthly statements and monthly financial management reports were sent to each of the three individuals. Prudential and Storaska alleged that Phillips discussed his investments on a regular basis with his brother who was also a client of Storaska. Prudential and Storaska alleged that Phillips subsequently recovered most of his losses. Prudential and Storaska alleged that Phillips was sent comprehensive proposals for his NASD

portfolio, but declined to discuss them with Storaska. Phillips allegedly agreed to place his money in long-term investments and now apparently is complaining that he may suffer a loss if he pulls his money out of these investments prematurely.

Prudential asserted a counterclaim for recovery of unnecessary legal fees and expenses caused by Phillips filing of an action in the United States District Court for the Middle District of Tennessee which matter was subsequently referred to arbitration.

Phillips replied to the Counterclaim and asserted that the arbitration agreement in the client agreement executed by Phillips was unlawful. Phillips alleged that Prudential waived their claim for damages and expenses and are estopped from making such a claim. Phillips further alleged that the Counterclaim must be denied because there was no legal right to recover such expenses.

RELIEF REQUESTED

Phillips requested damages in the amount of \$231,562.00 for the cost of FNN Composite Options, damages in an amount equal to the principal amounts invested in the limited partnerships purchased for his account together with a reasonable return on his investments of 10%, all believed to be not less than \$500,000.00, cancellation of the annuity transactions, plus margin interest, refund of losses due to purchases of unsuitable investments, refund of commissions, costs, expenses, attorney's fees and punitive damages.

Prudential and Storaska requested dismissal of the claim plus damages according to proof on their counterclaim and costs taxed to Phillips.

Phillips requested dismissal of the counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

After the hearing, the arbitration panel allowed Claimant's counsel to file a post-hearing specific written request for information from Respondents. The document request was filed with the NASD on March 2, 1992. Prudential and Storaska filed a response to the Post-hearing Document request with the NASD on March 16, 1992. Thereafter, a letter was received from Claimant's Counsel on May 5, 1992 and a reply to that letter was filed

with the NASD on May 8, 1992. These documents were forwarded to the NASD arbitration panel which determined not to reopen the record to take further testimony.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the letters of counsel requesting the closure of the record and entry of an award, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. On the claim of a return of commissions charged to Phillips, Prudential and Storaska agreed at the hearing to return Fourteen thousand nine hundred dollars and no cents (\$14,900.00) in commissions charged to Phillips as a consequence of the trading in his account at Prudential.

2. As to Phillips' claim for margin interest, Prudential and Storaska are jointly and severally liable for and shall pay to Phillips, the sum of Fifty four thousand seven hundred eighty dollars and twenty one cents (\$54,780.21);

3. Prudential and Storaska are also jointly and severally liable for and shall pay to Phillips, the sum of One hundred twenty eight thousand seven hundred seven dollars and no cents (\$128,707.00) for the second purchase of FNN Call Options which the panel determined was unauthorized;

4. Prudential and Storaska are jointly and severally liable for and shall pay to Phillips, interest on the total sums awarded in the amount of Thirty nine thousand eight hundred eighty dollars and twenty one cents (\$39,880.21);

5. All other claims asserted against Prudential and Storaska by Phillips, including claims for return of commissions on the sales of stock and limited partnerships, rescission of the limited partnerships and punitive damages are specifically denied and dismissed;

6. Prudential's counterclaim against Phillips is denied and dismissed in its entirety; and,

7. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant, Phillips. Phillips is assessed additional Forum Fees in the amount of \$750.00. Prudential is assessed and shall pay to the NASD additional Forum Fees in the amount of \$4500.00 and the non-refundable claim filing fee of \$250.00 which was not paid to the NASD at the time Prudential filed its Counterclaim against Phillips. Forum Fees were assessed on the basis of \$1000.00 per hearing session for six (6) hearing sessions.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Dated:

July 28, 1992

S/S James M. Swiggart, Esq.
Presiding Chair
Public Arbitrator

July 15, 1992

S/S Ronald W. Greene
Public Arbitrator

August 21, 1992

S/S Milton H. Sitton, Esq.
Industry Arbitrator

Date Award served by the NASD: August 28, 1992