

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William and Carolyn Magda

90-00059

Name of Respondents

Shearson Lehman Hutton, Inc.
Prudential-Bache Securities Inc.
Joseph N. Yander
Raymond Brennan

Heard before:

Dorothy F. Gray
Fred S. Pieroni
Edward Buckley

Public Arbitrator
Public Arbitrator
Industry Arbitrator

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 2, 1990. Claimants William and Carolyn Magda ("Claimants") alleged that their broker Joseph N. Yander ("Yander") employed, at various times at Shearson Lehman Hutton, Inc., at a Thomson McKinnon Securities, Inc. Office now operated by Prudential-Bache Securities, Inc., churned Claimants' accounts, engaged in unauthorized trading and recommended unsuitable investments. Claimants alleged that Shearson Lehman Hutton, Inc. ("Shearson"), Raymond Brennan ("Brennan") and Prudential-Bache Securities, Inc. ("Prudential-Bache") failed to supervise Yander and are liable for his actions under the Doctrine of Respondeat Superior.

In a Statement of Answer and Conditional Crossclaim filed with the NASD by Shearson on March 9, 1990, Shearson maintained that it properly supervised Yander and that the Claimants were aware of the activities in their accounts. Shearson further maintained that it properly handled Claimants' accounts at all times and that if the panel renders any award against Shearson then Yander should be held liable to Shearson in the full amount. In a Joint Statement of Answer filed by Thomson McKinnon Securities, which is no longer a party due to its filing of bankruptcy, and Raymond Brennan on March 13, 1990, they maintained that they properly supervised the action of Yander and that the Claimants were fully aware of the activities in their accounts. In a Joint Statement of Answer filed by Raymond Brennan and Prudential-Bache

for the period from September 22, 1989 to the present, Respondents alleged that they handled Claimants' accounts properly and professionally and that they properly supervised the activities of Yander.

Yander did not submit an answer to the Claimants' claim.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$66,336.00 against Shearson and Yander, 2) compensatory damages in the amount of \$65,584.00 against Thomson McKinnon successor firm Prudential-Bache and Yander, 3) Claimants requested a return of all commission charges from the various brokerage firms and Yander in the amount of \$84,636.00, 4) miscellaneous expenses from the Respondent Brokerage Firms and Yander in the amount of \$708.00., 5) interest on the various amounts at the prevailing rate, 6) punitive damages, and, 7) costs and attorneys fees.

Respondents' requested that Claimants' claim be dismissed in its entirety. In addition, Shearson requested that if the panel concluded that the claims have factual basis, that to the extent the panel renders any award against Shearson, that the panel holds Yander liable to Shearson for the full amount.

AWARD

On November 19 and 20, 1990 and March 11 and 12, 1991 in New York, New York during a hearing lasting eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, William and Carolyn Magda on March 31, 1990 and signed by Shearson Lehman Hutton, Inc. on March 6, 1990 and by Raymond Brennan on March 6, 1990 and signed by Prudential Bache Securities on March 7, 1990. Respondent Joseph N. Yander did not execute a submission agreement nor did he file an answer, however, he was served with Claimants' claim and provided notice of all hearings. Pursuant to Section 12(A) of the Code of Arbitration Procedure, the presiding arbitrators exercised their jurisdiction over Respondent Joseph N. Yander.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

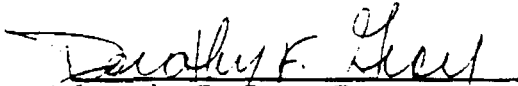
1. All claims asserted by the Claimants' against Respondent Prudential-Bache, Inc. were settled prior to the hearing.

2. That Respondent Vander is liable and shall pay to the Claimants the sum of \$8,000.00 plus nine (9%) percent interest per annum from January 2, 1990 to the date the award is satisfied.
3. That all claims against Respondents Brennan and Shearson are denied in their entirety.

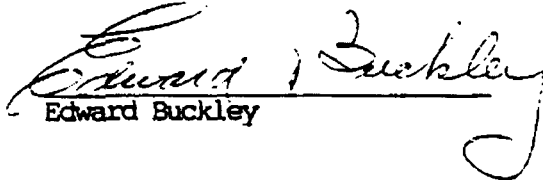
FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, Forum Fees are assessed against Claimants in the amount of \$3,000.00, however, Claimants are entitled to offset this amount with their filing fee of \$750.00 so that the amount due from the Claimants as forum fees are \$2,250.00. Respondent Shearson is also assessed forum fees in the amount of \$3,000.00 but are entitled to apply their counterclaim filing fee of \$750.00 so that the amount due from Respondent Shearson as forum fees is \$2,250.00. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators


Dorothy F. Gray, Esq.


Fred S. Pieroni


Edward Buckley

Date of Decision: 3/12/91

March 12th, 1991