

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

W. M. Sanders

90-00202

Name of Respondents

Prudential-Bache Securities Inc.
Porcari Fearnow & Associates, Inc.

REPRESENTATION OF PARTIES

Claimant W. M. Sanders was pro se.

Respondent Porcari Fearnow & Associates, Inc. was represented by Donald J. Willy of Donald J. Willy & Associates, Houston, Texas.

Respondent Prudential-Bache Securities, Inc. was represented by Charles T. Richard of Prudential Securities, Inc., New York, New York.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 17, 1990, Claimant W.M Sanders alleged that Respondents Porcari-Fearnow & Associates, Inc. and Prudential-Bache Securities, Inc. failed to execute certain option contracts ordered by him and then failed to pay him the profit due. As alleged, Claimant phoned in an order to Porcari-Fearnow on October 12, 1987 for 25 OEX 290 puts at 3/8 and 50 285 puts at 1/8. Shortly thereafter, Claimant was informed that the order had not been filled and the market had dropped, so he ordered the purchase of 20 290 puts at market (1/2) and 25 285 puts at market (3/16). Later that day, Claimant was informed that the market had come back and both pairs of orders had been filled. On October 13, 1987, Claimant placed a buy order for 100 290 puts at 1/16. Later that day, there was no bid, the ask was 1/16 and Claimant told his account representative that he assumed the order was filled. On October 15, 1987, prior to selling the puts, Claimant attempted to confirm the status of his account, but was told the Prudential-Bache lines and computers were down and no confirmation was possible. Claimant sold the puts (75 285, 145 290) on October 15th. Confirmation for the first two October 12 trades; apparently the only ones executed, were not mailed by Porcari-Fearnow until October 15, 1987. While no effort was made to collect from Claimant for selling more puts than were bought, neither was

Claimant paid the profit due him.

In a Statement of Answer filed with the NASD on March 19, 1990, supplemented on April 7, 1990, Respondent Prudential-Bache Securities, Inc. denied any liability to the Claimant, stating that Respondent was simply a clearing agent for Respondent Porcari-Fearnow and did not deal with Claimant, but simply executed orders as transmitted by Respondent Porcari-Fearnow.

In a Statement of Answer on Cross claim filed with the NASD on April 3, 1990, Respondent Porcari-Fearnow & Associates, Inc. denied the material allegations of the Statement of Claim, alleging that any losses are due to Respondent Prudential-Bache Securities, Inc. Respondent crossclaimed against Prudential-Bache for indemnification pursuant to the correspondent agreement.

In a Response to Porcari-Fearnow's cross claim filed with the NASD on May 4, 1990, Respondent Prudential-Bache Securities, Inc. states that the cross-claim fails to specify any acts of "negligence" or "malfeasance" and that Claimants' loss, if any, could in no way have been caused by Prudential-Bache.

RELIEF REQUESTED

Claimant W. M. Sanders requested entry of an award against Respondents in the amount of \$23,836.00 plus accrued interest from October 17, 1987.

Respondent Porcari-Fearnow & Associates, Inc. requested that the claim be dismissed and denied in its entirety, or in the alternative, that an award be entered against Respondent Prudential-Bache Securities, Inc. on the cross claim for full indemnity for all sums Porcari-Fearnow is required to pay Claimant, together with interest from date of payment, attorney's fees and costs.

Respondent Prudential-Bache Securities, Inc. requested the claim be dismissed and denied in its entirety. Furthermore, Respondent Prudential-Bache requests that the crossclaim of Respondent Porcari-Fearnow be dismissed and denied in its entirety.

PROCEDURAL MATTERS

On May 17, 1991 in Houston, Texas during lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 12, 1990 by Claimant W. M. Sanders.

Respondents Porcari, Fearnow & Associates, Inc. and Prudential-Bache Securities, Inc. (now known as Prudential Securities, Inc.) did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with the NASD.

AWARD

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 for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. Respondent Porcari-Fearnow's cross claim is hereby dismissed and denied in its entirety;
3. Each party shall bear their own costs of arbitration, including attorney's 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 the hearing session deposit in the amount of \$ 400.00 previously deposited with the NASD by the Claimant W. M. Sanders. Respondent Porcari, Fearnow & Associates, Inc. is liable and shall pay to the NASD additional forum fees in the amount of \$500.00.

Dated:

May 17, 1991

/S/ Gordon W. Hall
Gordon W. Hall, Esq.
Presiding Chair
Public Arbitrator