

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kathleen M. Fagen

90-00506

Name of Respondent(s)

Prudential-Bache Securities Inc.

Heard before:

Name

Robert J. Ruben, Esq.

Stuart DeHaaf, Esq.

Jeffrey E. Skogsbergh

Public/Industry

Public/Chairman

Public

Industry

REPRESENTATION

Claimant was represented by: Scott L. Gilmore, Esq. of Hill, Farrer & Burrill

Respondent was represented by: Stephen J. Shine, Esq.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 16, 1990.

Claimant, Kathleen M. Fagen (Fagen), alleges that Respondent, Prudential-Bache Securities, Inc. (PB) caused two unauthorized transactions to be made in her account. Specifically, Fagen alleges that Steve Hammer(Hammer), Fagen's account representative, transferred \$3,683,756.46 from her Moneymart Assets account to purchase 243,957,381 shares in the National Municipals Fund. Shortly after, Hammer exchanged the shares for \$3,666,659.44 for a loss of principal of \$17,077.02.

Fagen also alleges that Hammer made another unauthorized transaction leading to a loss of \$24,395.74.

It is also asserted that Fagen was charged a deferred sales charge for switching from one fund to another which did not comport to the the Prudential-Bache California Mutual Fund Prospectus in that the funds had been invested for a four year period. Said deferred sales charges totalled \$44,802.07.

Respondent PB alleges by way of defense that Herbert Fischel (Fischel), Fagen's husband managed the account through Hammer and that the exchanging of mutual funds from money funds into bond funds was a strategy that resulted in high profit for Claimant.

Respondent asserts that both transactions complained of were fully discussed with Fischel and that Fischel authorized and ratified them. The deferred sales charges for the switching of the funds was also fully disclosed both orally and by written prospectus. Respondent stipulates that Claimant is entitled to a refund of \$11,500.00.

RELIEF REQUESTED

Claimant, Kathleen M. Fagen, seeks to recover approximately \$107,000.00 in losses incurred by the unauthorized transactions and the erroneous "back end" charges for transaction in the funds.

Respondent, Prudential-Bache Securities, seeks dismissal of the claim in its entirety plus costs.

AWARD

On April 30, 1991, in Los Angeles, California during a hearing lasting 2 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Kathleen M. Fagen on February 10, 1990 and signed by Stephen J. Shine on behalf of Respondent, Prudential-Bache Securities, Inc. on May 29, 1990.

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. Respondent, Prudential-Bache Securities, Inc. is solely liable and shall pay to Claimant, Kathleen M. Fagen, the sum of Fifty Six Thousand Dollars and No Cents. (\$56,500.00).
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

In accordance with Section <43c> of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. In addition, Respondent is also assessed fees of \$750.00. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures


Jeffrey E. Skogsbergh

Date of Decision: _____