

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

George W. Gatter

CASE #90-00642

Name of Respondent(s)

Prudential-Bache Securities Inc.
Anthony L. Guzzetta

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.
Judy Avey
Leslie Bishop

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Industry

REPRESENTATION

Claimant, George Gatter ("Gatter"), was represented by Russell L. Forkey, Esq. of Russell L. Forkey, P.A. Respondents, Prudential-Bache Securities, Inc. ("Prudential") and Anthony Guzzetta ("Guzzetta"), were represented by William C. Freitag, Esq. of Prudential Bache Securities, Inc.

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 6, 1990. Claimant alleged that Respondents were liable for: fraud and deceit; breach of fiduciary duties; negligence; and, as it relates to Prudential, negligent supervision. Claimant alleged that Guzzetta made material misrepresentations regarding, among other things, the risks of trading in options and of trading on margin; recommended unsuitable investments; and did not get prior approval for each transaction.

In a Statement of Answer filed with the NASD on May 17, 1990, Respondents denied liability and alleged that: Claimant was an aggressive investor who wanted to take risks; Claimant understood the significance of trading on

margin; Gatter was aware of the risks of trading options; and Claimant's losses were caused by the October 1987 market crash. Respondent, Prudential made an Ore Tenus Motion at the hearing to add a counterclaim for a debit balance in Claimant, Gatter's account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$52,000 plus interest, costs, and punitive damages of \$20,000.

Respondents requested dismissal of the claim and counterclaim for damages in the amount of \$1,500 inclusive of interest.

AWARD

On February 26, May 15 and May 17, 1991, in Fort Lauderdale, Florida, during a hearing lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Gatter on February 26, 1990 and signed on May 16, 1990 by Kevin Hurley on behalf of Respondent, Prudential, and signed by Respondent, Guzzetta on February 26, 1991.

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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.
2. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's request for punitive damages is denied.
4. Claimant/Counter Respondent, Gatter, is found liable and shall pay to the Respondent/Counter Claimant, Prudential, the amount of \$1,500 inclusive of interest.

FORUM FEES

5. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,800 (1 pre-hearing conference x \$300 plus 5 sessions x \$500 per session). Claimant is hereby assessed \$2,800 for which the NASD shall retain the \$500 previously deposited in partial satisfaction thereof.

6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

7. None.

Concurring Arbitrators' Signatures

/s/
Robert Harschmann, Esq.

/s/
Judy Avey

/s/
Leslie Bishop

Date of Decision: May 28, 1991