

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Jack J. Waldman)

Name of Respondent(s))

Prudential-Bache Securities Inc.)

David H. Sagerman)

Case No. 90-00710

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.

Judy Avey

S. Richard Savage

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 8, 1990. The hearing was conducted in Fort Lauderdale, Florida on November 27, 1990, with a total of three (3) sessions.

Claimant, Jack J. Waldman Trust ("Waldman"), alleged that he was an elderly, retired, unsophisticated investor with little experience in securities; that he engaged his nephew Respondent, David H. Sagerman ("Sagerman"), as his financial advisor and opened an account with Sagerman at Respondent, Prudential-Bache Securities, Inc. ("Pru-Bache"); that Respondents made misrepresentations of material facts and omitted to state material facts; that Respondents recommended and sold to Claimant an unsuitable limited partnership; that Respondents' actions constituted violation of the 1940 Investment Advisor Act and Section 517.301, Florida Statute.

Respondents denied all allegations of wrongdoing and alleged that Claimant had been fully advised of the risks of the investment; that no guarantee of listing on a stock exchange (and therefore liquidity) was made to Claimant; that Claimant was fully aware that it was the future intention to list the limited partnership; and, that Claimant assumed the risks.

RELIEF REQUESTED

Claimant requested rescission and/or damages in the amount of \$103,000.00, plus interest, costs and reasonable attorney's fees. Respondents requested dismissal and costs.

AWARD

On November 27, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on

March 1, 1990, and by Respondents Pru-Bache on May 17, 1990 and Sagerman on May 17, 1990. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined 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 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, Inc.
2. Respondent, Sagerman, is found not liable to the Claimant and, therefore, all claims against him are hereby dismissed.
3. Respondent, Pru-Bache, is found liable for rescission as follows: Upon the Claimant signing over his 5,150 shares of Summit Tax Exempt LPII, Pru-Bache shall simultaneously pay to Claimant the amount of One Hundred Thousand Three and 00/100 (\$103,000.00) Dollars representing his original investment.
4. Respondent, Pru-Bache, is further found liable and shall pay to the Claimant the amount of Five Thousand and 00/100 (\$5,000.00) Dollars for attorney's fees and Eighteen Hundred and 00/100 (\$1,800.00) Dollars for expert witness' fees, pursuant to Section 517.211, Florida Statutes.
5. Claimant's request for interest is denied.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars (\$750 x three sessions). The Claimant is hereby assessed forum fees in the amount of One Thousand One Hundred Twenty Five and 00/100 (\$1,125.00) Dollars for which the NASD will retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollars previously deposited in partial satisfaction thereof. Pru-Bache is hereby assessed forum fees in the amount of One Thousand One Hundred Twenty Five and 00/100 (\$1,125.00) Dollars payable to the National Association of Securities Dealers, Inc.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None

ARBITRATORS CONCURRING

Myron Dunay Esq., Judy Avey and S. Richard Savage

Dated this 14th day of December 1990.