

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Carol & Reue Verbus

90-01185

Name of Respondents

Shearson Lehman Hutton, Inc.
Prudential-Bache Securities Inc.
Howard M. Russell

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 26, 1990, Carol and Reue Verbus ("Claimants") alleged that Howard M. Russell ("Russell"), Prudential-Bache Securities, Inc. ("Pru-Bache"), Russell's employer until June, 1987 and Shearson Lehman Hutton, Inc. ("Shearson") (collectively as "Respondents"), Russell's employer subsequent to June, 1987 engaged in unsuitable, fraudulent and improper trading in their accounts. Claimants specifically alleged that Respondents made material misrepresentations regarding and failed to disclose the risks involved in the investments made in Putnam High Income Government Trust Fund.

In their joint answer filed with the NASD on or about August 14, 1990, Respondents Pru-Bache and Russell specifically denied the allegations set forth in the statement of claim. Pru-Bache and Russell stated that the Claimants were furnished with a prospectus and were fully aware of the fact that Putnam was suitable for them in light of their stated financial condition and investment objectives and that the market value was subject to normal price fluctuation. Pru-Bache and Russell further stated that Claimants were sophisticated investors and asserted the following affirmative defenses: the claim is barred by the statute of limitations, laches, ratification and the claim fails to state a cause of action upon which relief can be granted.

In its response to the statement of claim filed with the NASD on or about June 18, 1990, Shearson stated that the purported claims against it were vague and lacked specificity and asserted a motion to dismiss or in the alternative a motion for a more definite statement. Shearson further stated that Claimants were knowledgeable investors and authorized or ratified all transactions in their account. Shearson specifically denied acting improperly and asserted the following affirmative defenses: the claim fails

to state a claim upon which relief can be granted; waiver; estoppel; ratification; and laches.

On or about July 26, 1990, Shearson filed with the NASD an amendment to its response dated June 13, 1990. Shearson stated that it had reached a settlement of all claims with the Claimants.

RELIEF REQUESTED

Claimants requested an award in the amount of \$23,800.00, unspecified punitive damages, attorneys fees, costs and interest.

Pru-Bache and Russell requested that the claims be dismissed in its entirety.

Shearson requested that the claims asserted against it be dismissed.

PROCEDURAL MATTERS

On March 8, 1991 in New Orleans, Louisiana during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 15, 1990 by Claimants Carol and Reue Verbus and on July 27, 1990 by William A. Hohauser on behalf of Respondent Shearson Lehman Hutton, Inc.

Respondents Prudential-Bach Securities, Inc. and Howard Russell did not file properly executed submission agreements but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim and appearing at the hearing are bound by the determination of the arbitrator on all issues submitted.

AWARD

The arbitrator, 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 claims against Shearson Lehman Hutton, Inc. shall be and hereby is dismissed with prejudice;
2. Respondents Howard Russell and Prudential-Bache Securities, Inc. are found jointly and severally liable to the Claimants Carol and Reue Verbus in the following terms:
 - a. Compensatory damages are found for Carol Verbus in the amount of Three Thousand Two Hundred Forty-One Dollars (\$3,241.00);
 - b. Compensatory damages are found for Reue Verbus in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00);

- c. The aforesaid damages shall each accrue simple interest at the rate of 7% per annum from November 1, 1987 to the date hereof; and
- d. Further damages are assessed at the rate of judicial interest prescribed by Louisiana statute from the date this award is received by Respondents to and including the date payment in full of this award is made to Claimants.
3. Punitive damages are not awarded;
4. Attorneys fees and costs are not awarded; and
5. 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 \$300.00 previously deposited with the NASD by the Claimants. Respondents Prudential-Bache Securities, Inc. and Howard Russell shall pay to the NASD the sum of \$600.00 as forum fees.

Dated:

22nd April 1991

John F. Galvin

John F. Galvin, Esq.
Residing Arbitrator