

In the Matter of the Arbitration Between :
: Burton J. and Shirley B. Udelson :
: Claimants :
: vs. :
: Prudential-Bache Securities, Inc. :
: Respondent :

AWARD
Case #90-01325

Heard by:

Stephen E. Crable,

Public Arbitrator

REPRESENTATION

The Claimants were represented by Susan Anthony, Esq. of the law firm of Leighton & Regnery.

The Respondent was represented by Patricia Fitzpatrick, Esq.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 10, 1990 Claimants Burton J. and Shirley B. Udelson alleged the Respondent purchased a stock-related option contract for the Claimants before the office branch manager had given his written approval of an options trading account for the Claimants and the "applicable current Option Disclosure Document" was never delivered to the Claimants and further alleged the branch manager approved the opening of the account based on incorrect information furnished to him by Respondent's representatives. Claimants further alleged the Respondent's representative Mr. Juskiewicz was grossly negligent in urging Mr. Udelson to follow a very risky strategy, i.e. buying puts on the OEX instead of purchasing a bellwether stock straddle position as Mr. Udelson proposed; in making overly optimistic representations about the success of his proposed strategy; in failing to confer with Mr. Udelson, as he had agreed, to switch to puts on a bellwether stock when the OEX did not open with the market; and in exceeding the six thousand dollar risk limit which Mr. Udelson had imposed and exposing him to greater than a fourteen thousand dollar loss.

Respondent Prudential-Bache Securities, Inc., maintained the Claimants came to Prudential-Bache Securities, Inc., as sophisticated investors with significant financial experience who wished to trade in options and understood the markets and how they functioned. Respondent further maintained the Options Agreement was completed and the Claimants were approved for options trading the same day of the subject trade and the branch manager affixed his signature to the agreement the following day and it was signed by the Claimants on October 23, 1989. Respondent further maintained that the Claimants were fully and accurately informed of the circumstances and risks associated with trading options and after careful consideration of these risks they attempted to take advantage of a volatile market by trading options and stated they wanted to risk at least Six Thousand Dollars and No Cents (\$6,000.00) and were fully aware that 10 OEX puts could cost more than Six Thousand Dollars and No Cents (\$6,000.00) depending on where the market opened.

RELIEF REQUESTED

Claimants requested damages of \$14,280.39, plus interest at the rate of 6% per annum from November 1, 1989 plus reasonable attorneys fees and the costs of arbitration. Respondent requested dismissal of claim and that costs of defending the action be assessed against the Claimants.

AWARD

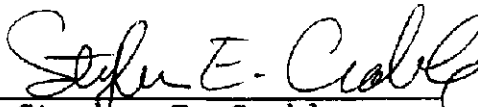
On June 27, 1991 the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Burton J. and Shirley B. Udelson on May 4, 1990 and by Respondent, Prudential-Bache Securities, Inc. on July 5, 1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in Washington, D.C and consisted of two (2) hearing sessions. The arbitrator, 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 Respondent Prudential-Bache Securities, Inc. be and hereby is liable and shall pay to the Claimants the sum of \$4,000.00, interest specifically excluded.
2. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimants. In addition, the Respondent Prudential-Bache Securities, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc., the sum of \$300.00 to represent forum fees.

ARBITRATOR SIGNATURE



Stephen E. Crable

Date Executed: *July 15*, 1991
~~Date of Decision:~~
Dated by NASD: July 25, 1991

REPORT OF ARBITRATOR

Claimant Burton Udelson acknowledged that he agreed to risk up to \$6,000.00 in a speculative options trading strategy. Accordingly, Claimants' losses up to that amount must be borne by Claimants and Claimants alone. The \$8,000.00 in losses beyond the \$6,000.00 level, however, are a different matter. For the reasons noted below, these losses are attributable equally to the Claimants and Respondent.

Although Respondent argued that Claimants are simply disappointed investors, seeking to recover losses caused by an unsuccessful trading strategy, the Arbitrator finds that Claimants' losses were attributable, in part, to conduct by Respondent. At the time of this transaction, Mr. Juskiewicz had only a few months of experience in the securities industry. Despite his lack of experience, Mr. Juskiewicz represented himself to Claimant Burton Udelson as a successful, experienced options trader. On October 16, 1989, Claimant Burton Udelson contacted Mr. Juskiewicz to discuss a relatively conservative options strategy. Mr. Juskiewicz persuaded him to follow a different and far riskier options strategy. Claimants acquiesced in this strategy, in part, based upon Mr. Juskiewicz's purported skill and expertise in options trading. Notwithstanding the expected volatility of the market on October 16, due to the October 13 "mini-crash", Mr. Juskiewicz did not discuss any of the risks associated with the strategy which he proposed. Moreover, Mr. Juskiewicz recommended and executed this strategy without confirming that the Claimants had an appropriate option agreement with Respondent Prudential-Bache Securities, Inc., and with no idea as to the scope, extent or nature of the Claimants' option trading experience. In view of these facts, and the Respondent's perfunctory compliance with SEC Rules 721(a)-(c) and 723, a portion of the Claimants' losses are attributable to conduct by the Respondent.

The Claimants, however, must bear equal responsibility for their losses in excess of \$6,000.00 for it was the Claimants who ultimately made the decisions, albeit influenced by Mr. Juskiewicz, which led to the losses. Although the Claimant Burton Udelson was not a seasoned options trader, and that fact should have been known to Respondent with reasonable diligence, the Claimant Burton Udelson was an experienced and sophisticated investor, who traded, at one time or another, stocks, bonds, options and commodities. The Arbitrator finds that the Claimant Burton Udelson did not insist on placing a limit order in connection with the transaction at the heart of this case, despite his familiarity with this technique and his normal practice of using limit orders when purchasing stock. Claimant Burton Udelson was surely sophisticated enough to understand the difference between a market and limit order and, therefore, must bear equal responsibility for the losses he incurred. Based on

the foregoing considerations, as well as the record as a whole, the Arbitrator concludes that Claimants were damaged by Respondent's conduct to the extent of \$4,000.00.

STATE OF *Maryland*
COUNTY OF *Montgomery*

S.S.:

On this *15th* day of *July*, 1991,
before me personally appeared Stephen E. Crable known to me
to be the individual described in and who executed the foregoing
instrument and he duly acknowledged to me that he/she executed
the same.



SHEILA ANDERSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires November 16, 1994