

NATIONAL ASSOCIATION OF SECURITIES DEALERS, '

In the Matter of the Arbitration Between)	
Jo Ann Andrews,)	
William A. Peel, D.D.S.)	
)	Claimants
vs.)	AWARD
)	NASD #90-02180
Shearson Lehman Hutton, Inc.,)	
Prudential-Bache Securities, Inc.)	
)	Respondents

REPRESENTATION

Claimant was represented by her husband James M. Andrews. Respondent Shearson Lehman Hutton, Inc. was represented by Emi A. Murphy, Esq. of the law firm of Kessal, Young & Logan. Respondent Prudential-Bache Securities, Inc. was represented by Ellen Keezer, Esq. of Prudential-Bache Securities.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 9, 1990. Claimant alleged that she is a participant in a pension plan that purchased a \$10,000 interest in a limited partnership in August 1980 through Prudential-Bache Securities, and had the limited partnership certificates delivered to her Shearson account in June 1982. Claimant further alleged that in December 1987 she learned that neither Respondent had the certificates and were therefore negligent in the handling of her account.

Respondent Prudential-Bache denied the allegations and maintained that the investment was not purchased through Pru-Bache, that the limited partnership units were transferred into Claimant's account at Prudential-Bache in August 1980, and that the units were subsequently transferred to Claimant's Hutton account in June 1982 per Claimant's request. Respondent Prudential-Bache further alleged that the claim is barred under the applicable statutes of limitations, and under Section 15 of the NASD Code of Arbitration Procedure.

Respondent Shearson Lehman Hutton, Inc. denied the allegations and maintained that there was no record of the limited partnership certificates being held at Hutton and that any disbursements or distributions from the partnership would

have been sent to the trustee of the pension plan. Respondent Shearson Lehman Hutton further alleged that the claim is barred under the applicable statutes of limitations and is ineligible under Section 15 of the NASD Code of Arbitration Procedure, and asserted affirmative defenses including the doctrine of laches, failure to state a claim upon which relief may be granted, contributory negligence, waiver, assumption of the risk, and failure to mitigate.

DAMAGES AND RELIEF REQUESTED

Claimant requested that Respondents account for all distributions of the partnership to the present; that Respondents locate the missing certificates and put them in Claimant's name; if unable to locate the certificates, Claimant requests replacement value calculated at the highest value of the units during the period of the investment to the present; costs of this arbitration; and punitive damages.

Respondent Prudential-Bache Securities requested dismissal of the claim in its entirety and costs of this arbitration.

Respondent Shearson Lehman Hutton requested dismissal of the claim in its entirety and costs of this arbitration including reasonable attorney's fees.

DAMAGES AND RELIEF AWARDED

On May 6, 1991 a pre-hearing conference was held pursuant to Section 32 of the Code of Arbitration Procedure via telephone conference call and lasted one session. In attendance were James M. Andrews (Claimant's representative), Ellen Keezer (counsel for Prudential-Bache), Emi A. Murphy and William A. Hohausser (counsel and co-counsel for Shearson Lehman), Norman R. Cohen (Presiding Arbitrator), and a representative from the NASD. The pre-hearing conference was held at the request of both Respondents to rule on their respective motions to dismiss.

The sole arbitrator, having considered the pleadings, the motions and response, oral argument, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted as follows:

1. Respondents' respective motions to dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure are hereby GRANTED. This ruling is based upon a clear reading of the language of Section 15 which provides that "No dispute, claim

or controversy shall be eligible for submission under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim, or controversy." Although the allegations are contested, Claimant's Statement of Claim alleges that the partnership units were purchased through Prudential-Bache Securities in August 1980, and requested that the certificates be transferred to E.F. Hutton in or about June 1982. Claimant filed this claim with the NASD on August 9, 1990. Based upon the foregoing, this claim is ineligible for submission to this forum.

2. The parties shall each bear their respective costs including attorneys' fees.

3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100 non-refundable filing fee and the \$400 hearing session deposit previously deposited by the Claimant.

OTHER ISSUES

A Uniform Submission Agreement submitting this controversy to arbitration was signed by Claimant Jo Ann Andrews on July 31, 1990 and by Respondents Prudential-Bache Securities on December 21, 1990 and Shearson Lehman Hutton, Inc. on February 4, 1991. In addition, a Uniform Submission Agreement signed by William A. Peel on October 13, 1990 and a letter of authorization dated October 3, 1990 was filed by William A. Peel which authorizes JoAnn Andrews to act on behalf of the Pension Plan Trust in this matter.

DATE SERVED: 5/30/91


Norman R. Cohen, Esq.