

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

The Estate of Leona M. Cannistraro )

Case No. 90-02498

Name of Respondent(s) )

Prudential-Bache Securities Inc. )

Thomas J. Lavecchia )

Joel B. Srodes )

L. James Crozier )

REPRESENTATION

For Claimant, the Estate of Leona M. Cannistraro ("Cannistraro"): Henry Sanchez, Jr., Esq. of Page & Bacek.

For Respondents, Prudential Securities, Inc. ("Prudential"), Thomas J. Lavecchia ("Lavecchia"), Joel B. Srodes ("Srodes") and L. James Crozier ("Crozier"): Frederick S. Schriels, Esq. of Holland and Knight.

CASE INFORMATION

Statement of Claim filed: September 7, 1990 and amended April 15, 1991. Claimant's Submission Agreement signed by Leona M. Cannistraro August 20, 1990 and on November 13, 1991, by Allan Casey as Personal Representative of the Estate.

Respondents' Joint Statement of Answer filed: November 20, 1990 and amended on November 8, 1991. Respondents' Submission Agreements signed by Crozier and Srodes on November 21, 1990, by Lavecchia on November 13, 1991, and by Noah Sorkin on behalf of Prudential on November 19, 1990.

HEARING INFORMATION

On November 13, 14 and 15 and December 2 and 3, 1991, in Tampa, Florida, hearings lasting 13 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; violations of the Federal Racketeer Influenced and Corrupt Organizations Act (RICO); violations of Chapter 517 of the Florida Statutes; and, violation of the

common law of the state of Florida. Claimant alleged that Lavecchia engaged in unauthorized trading; placed Claimant into unsuitable investments including limited partnerships and currency transactions; swapped mutual funds without authorization; and, failed to advise Claimant of front-end and back-end loads and otherwise breached his fiduciary duty. Claimant alleged that the remaining Respondents were liable for failure to supervise and under the doctrine of respondent superior.

Respondents denied all allegations of wrongdoing and alleged that all transactions were conducted with Claimant's full knowledge and consent.

#### RELIEF REQUESTED

Claimant requested damages in excess of \$10,000.00, punitive damages of \$100,000.00, plus interest, costs and attorney's fees.

Respondents requested dismissal of the claim, plus attorney's fees.

#### OTHER ISSUES CONSIDERED & DECIDED

1. This Panel has determined that it heard sufficient evidence at the time of the hearing that Respondent, Lavecchia, was operating out of an unlicensed office in Winterhaven, Florida and, therefore, this Panel declined to reopen the hearing. The Panel has determined, however, that no damages were incurred by Claimant as a result thereof.

2. 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 originals remain on file with the NASD.

#### AWARD

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. Respondents, Prudential, Lavecchia, Srodes and Crozier, are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimant's requests for attorney's fees, costs and punitive damages are denied.

3. Claimant is found liable and shall pay to Respondent, Prudential, the amount of \$15,000.00 for attorney's fees, pursuant to Chapter 517 of the Florida Statutes. The Panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,750.00 (13 sessions x \$750.00 per session). Claimant is hereby assessed \$9,750.00 for which the NASD shall retain the \$800.00 previously deposited in partial satisfaction thereof.

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

Concurring Arbitrators' Signatures

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John P. Cullen, Esq.

Public

151  
A. William Cohen, Esq.

Industry

151  
James A. Smith, IV

Public

Date of Decision: March 27, 1992