

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Bette Muskat)

Case No. 90-03122

Name of Respondent(s))

Prudential-Bache Securities Inc.)

Ivan R. Gefen)

John Pandolfi)

REPRESENTATION

For Claimant, Bette Muskat ("Muskat"): Patricia A. Shub, Esq., of Shub & Barclay, P.A.

For Respondents, Prudential Bache Securities, Inc. ("Prudential"), Ivan Gefen ("Gefen"), and John Pandolfi ("Pandolfi"): Jack Stein, Esq., of Stein Rosenberg & Winikoff.

CASE INFORMATION

Statement of Claim filed: November 6, 1990 and amended on July 15, 1991.
Claimant's Submission Agreement signed: July 8, 1991.

Respondents' joint Statement of Answer filed: January 10, 1991 and amended on September 4, 1991. Respondents' Submission Agreements signed by Gefen and Pandolfi on December 3, 1991, and by Noah D. Sorkin, Esq., on behalf of Prudential on January 3, 1992.

HEARING INFORMATION

On November 22, 1991 and January 2, 1992, in Fort Lauderdale, Florida, pre-hearing conferences lasting two (2) sessions were conducted (via telephone conference call) with an arbitrator.

On January 7, 8 and 9, 1992, in Fort Lauderdale, Florida, hearings lasting seven (7) sessions were conducted.

CASE SUMMARY

Claimant alleged that she was an inexperienced investor who relied solely on Respondents to recommend only suitable investments; she was newly divorced and responsible for supporting and educating three (3) children with the proceeds of the divorce; and, that her objective was income with safety of principal. Claimant alleged that Respondents, through Gefen, made

misrepresentations of and omitted to state material facts; recommended and effected transactions in unsuitable securities, including the sale of high quality bonds and the purchases of junk bond funds and limited partnerships, many of which Prudential was general partner or sponsor of and the majority of which were the highest commission generating investments; and, assumed discretionary authority over Claimant's accounts. Claimant alleged that Respondents' actions constituted negligence; breach of fiduciary duty; fraud; negligent hiring and supervision; and, violation of Section 517.301, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that Claimant has inflated the claimed losses, ignored income generated, and left out the withdrawal of large sums of money; that Respondents acted in accord with Claimant's wishes and did not exercise discretion; that Claimant misstated the facts; and, that Claimant's pleadings are simply erroneous and misleading.

RELIEF REQUESTED

Claimant requested damages in the amount of \$200,000.00 plus the loss of a reasonable return on principal, interest at 12% from date of investment to date of judgment, rescission, attorney's fees, punitive damages, costs and other relief.

Respondents requested dismissal, costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

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.

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, Gefen and Pandolfi, are found liable, jointly and severally, for rescissionary damages and shall pay to the Claimant the amount of \$158,000.00, in exchange for which the Claimant shall tender to Prudential all her right title and interest in the following securities:

- a. Growth Suite Limited Partnership;
- b. Prudential-Bache Spanos Realty Limited Partnership;
- c. Prudential-Bache Energy Income Partnership;
- d. Prudential Strategic Income Fund, Inc.; and,
- e. Hyperion Total Return Fund

2. Respondent, Prudential, is also found liable for further rescissionary damages and shall pay to the Claimant the further amount of \$25,000.00, in exchange for which the Claimant shall tender to Prudential all her right title and interest in Polaris Aircraft Income Fund IV.

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

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 \$5,850.00 (two pre-hearing conferences x \$300.00 plus seven sessions x \$750.00). Respondents are hereby assessed \$5,850.00 jointly and severally, \$750.00 of which shall be paid directly to the Claimant, and \$5,100.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

15/
Steven D. Elias, Esq.

Public

15/
Abe Mintz

Public

15/
Joseph M. Luby

Industry

Date of Decision: January 22, 1992