

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Irene Nancy Hamilton

90-03539

Name of Respondents

Prudential-Bache Securities Inc., now
known as Prudential Securities Incorporated;
Gerald S. Cohn

REPRESENTATION

For Claimant: Irene Nancy Hamilton was represented by H. Victor Thomas, Esq. and William R. Hayes, Esq. of Bennett, Brooks, Baker & Lange, L.L.P., located in Houston, Texas.

For Respondents: Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated, and Gerald Cohn were represented by Bruce W. Collins, Esq. and Ray D. Weston, Jr., Esq. of Carrington, Coleman, Sloman & Blumenthal, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: December 17, 1990.

Claimant's Submission Agreement signed on: November 23, 1990.

Joint Statement of Answer filed by Respondents Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated, and Gerald Cohn on: April 22, 1991.

Respondent Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated's Submission Agreement signed on: April 22, 1991 by James J. Rizzo, First Vice-President, Prudential-Bache Securities Inc.

Respondent Gerald Cohn's Submission Agreement signed on: September 11, 1991.

First Amended Statement of Claim filed: February 19, 1992.

Joint Response to the Amended Statement of Claim filed by Respondents on:

March 26, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: July 29, 1992 for two (2) sessions;
July 30, 1992 for two (2) sessions;
July 31, 1992 for three (3) sessions.

Hearing Location: Houston, Texas

CASE SUMMARY

Claimant Irene Nancy Hamilton ("Hamilton") alleged that Respondent Gerald Cohn ("Cohn"), while employed by or acting as an agent for Respondent Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated ("Prudential"), recommended and placed her funds in unsuitable investments in OEX index options, misrepresented or failed to explain the risks involved in this type of investment, and engaged in unauthorized trading. Hamilton specifically alleged as follows:

1. Hamilton acknowledged that she was an inexperienced investor, who requested that her money be invested in safe, high quality investments due to her age and limited earning ability. Cohn advised her to invest in covered call options and, relying on his expertise, she signed an Option Client Information Form and Agreement;
2. The Option Agreement was incomplete at the time she signed it and Cohn later filled in the Agreement with incorrect information;
3. Respondents Prudential and Cohn improperly approved Hamilton for high risk and complex "level three" option transactions which Hamilton did not understand and which were unsuitable given Hamilton's employment status, her stated objectives and her lack of understanding of the risks;
4. Respondents failed to adequately disclose the risks associated with trading stock index options and other strategies used by Cohn;
5. Respondents mismanaged Hamilton's account in 1987 because Hamilton's portfolio was not properly diversified, stock and option positions were sized incorrectly, purchases and sales were poorly timed, attempts at hedging were ineffective and there was no attempt to alter the allocation mix as market conditions changed;
6. Respondents did not obtain Hamilton's written authorization to exercise discretionary power in her account, violating Rule 408(a) of the New York Stock Exchange;
7. Cohn deliberately lied and concealed pertinent information

concerning Hamilton's investments to induce her to keep her investments with Prudential by assuring Hamilton that her investments were safe and expertly managed while her investments were suffering losses; and

8. In October of 1987, Hamilton's account was completely lost and Hamilton owed \$46,000.00 to Prudential.

Based upon the above allegations, Hamilton asserted violations of 10(b) and 10b-5 of the Securities and Exchange Act of 1934; common law fraud; breach of fiduciary duty; negligence and gross negligence; and breach of contract.

Respondents denied the material allegations of the Statement of Claim and Amended Statement of Claim, alleging that:

1. Hamilton certified in her Option Agreement that she had 20 years of investment experience in stocks and bonds and was experienced with put assignments and option expirations;

2. From 1981 until October, 1987, Hamilton had been happy with the handling of her account and exhibited all outward signs of understanding the trading of options, regularly analyzing her own account and the transactions therein;

3. The same strategies employed for profit in prior years caused Hamilton's significant losses in October of 1987 when the Dow Jones Industrial Index fell more than 33% in 2 days; therefore, Prudential and Cohn asserted that the primary cause of loss in Hamilton's account was the October 19, 1987 market "crash", which could not have been predicted by Respondents;

4. Respondents denied responsibility for any losses caused by the market decline; and

5. In Hamilton's income tax returns, she described her occupation as "investor", recognized the gains and losses related to options trading during the years relevant to this Arbitration and was an active participant in the trading of which she is now complaining.

RELIEF REQUESTED

Claimant Irene Nancy Hamilton initially requested an award against Respondents returning her investments in the sum of \$275,000.00 plus lost interest for three years in the sum of \$45,000.00; punitive damages of \$30,000.00 be trebled; any debts claimed by Prudential be cancelled and any of Hamilton's assets held by Prudential in New York be returned. In the First Amended Statement of Claim, the damage request was amended to pray for an award against the Respondents, jointly and severally, for actual damages in the sum of at least \$580,000.00; prejudgment and post-judgment interest in the maximum amounts allowed by law; costs of arbitration; reasonable attorneys' fees; punitive damages; and any such other and further relief has

Hamilton showed herself entitled.

Respondents Prudential and Cohn requested that the panel of arbitrators dismiss the claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

On July 17, 1992, Hamilton filed a Request for Leave to File a Supplemental Statement of Claim pursuant to Section 39(b) of the Code of Arbitration Procedure. Upon review of the Motion and all responses, the panel determined that the motion would be granted. On July 27, 1992, Hamilton withdrew the Supplemental Claim and the hearing proceeded on the remaining pleadings.

After the close of the hearing, but prior to the rendering of an award, Claimant Hamilton filed a Motion to Reopen the Evidence. The Motion and all Responses were forwarded to the panel for review. The panel determined that the Motion would be denied.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated, is liable for and shall pay to Claimant Irene Nancy Hamilton the sum of \$70,000.00;
2. In addition, the debit balance in the amount of \$48,980.00 in Claimant Irene Nancy Hamilton's account at Respondent Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated, shall be and is forgiven, and Respondent Prudential Securities Incorporated shall take no action to collect the amount;
3. All claims against Respondent Gerald S. Cohn are hereby dismissed and denied in their entirety; and
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Seven (7) sessions x \$1,000.00 = \$7,000.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$950.00 previously deposited by the Claimant Irene Nancy Hamilton. Respondent Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated, is liable for and shall pay to the NASD forum fees in the sum of \$7,000.00.

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

CONCURRING ARBITRATORS' SIGNATURES

Dated:

Franklin Anthony Arnold, Esq.
Franklin Anthony Arnold, Esq.
Public Arbitrator
Chairperson

September 28, 1992

Woody W. Wilson
Woody W. Wilson
Public Arbitrator

September 28, 1992

Laila M. Asmar, Esq.
Laila M. Asmar, Esq.
Industry Arbitrator

September 28, 1992

Date of Service on Parties: 9-29-92