

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Patricia Burke

91-00071

Name of Respondents

Prudential-Bache Securities Inc.,  
and Jay R. Jablonski

---

REPRESENTATION

Claimant Patricia Burke was represented by Barry Kirschner, Esq. of Stompoly & Stroud, P.C., Tucson, Arizona.

Respondents Prudential-Bache Securities, Inc. and Jay R. Jablonski were represented by Jesse B. Simpson, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the NASD on January 4, 1991.

Claimant Patricia Burke's Submission Agreement was signed on December 22, 1990.

A Joint Statement of Answer was filed with the NASD by Respondents, Prudential-Bache Securities, Inc. and Jay R. Jablonski on March 14, 1991.

Respondents Prudential-Bache Securities, Inc. and Jay R. Jablonski did not file Submission Agreements.

Respondent Sherri Jablonski, spouse of Respondent Jay R. Jablonski, was served by the NASD on a voluntary basis and refused to submit to arbitration.

HEARING INFORMATION

A pre-hearing conference was conducted by the panel chair prior to the

commencement of the hearing on September 12, 1991 for one (1) session.

The hearing took place on the following dates for the hearing sessions indicated:

September 12, 1991 for two (2) sessions  
September 13, 1991 for two (2) sessions  
November 25, 1991 for two (2) sessions  
November 26, 1991 for two (2) sessions  
November 27, 1991 for two (2) sessions

Hearing Location: Scottsdale, Arizona

#### CASE SUMMARY

Claimant, Patricia Burke ("Burke"), alleged that Respondents, Prudential-Bache Securities, Inc. ("Prudential-Bache") and Jay R. Jablonski ("Jablonski") made unsuitable investments on Burke's behalf and made material misrepresentations and omissions in connection with the purchase of those securities. Burke alleged that she contacted the Tucson office of Prudential-Bache in February 1988. Burke alleged she discussed her financial situation and financial goals with Jablonski and Jablonski knew Burke had no background or experience in making or managing investments and that she would be relying solely on Jablonski's expertise in carrying out her investment objectives. Burke alleged that her investment objectives were safety of principal, income and protection of the principal against inflation. Burke alleged Jablonski told her that the portfolio of state and municipal bonds she held was wrong for her. Burke alleged that based upon Jablonski's representations she authorized Jablonski to liquidate her portfolio and re-invest the proceeds according to Jablonski's personal financial plan which he prepared for Burke.

Burke alleged that Jablonski invested over 40% of her assets in Prudential-Bache products including the Prudential-Bache High Yield Fund, ("High Yield Fund") the Prudential-Bache Government Fund ("Government Fund") and the Prudential-Bache Energy Fund, ("Energy Fund"). Jablonski also invested Burke's funds in First Capital Income and Growth Fund, ("First Capital"), MFS Intermediate Bond Fund ("MFS") and various stocks and bonds.

Burke alleged that Jablonski never explained that the High Yield Fund was invested in junk bonds or that the Energy Fund and other investments were limited partnerships for which there was no ready resale market. Burke alleged that Jablonski told her he would not make a commission on the sale or purchase of her investments. Burke also alleged that Jablonski traded options in her account without disclosing the risks of options trading.

Burke alleged that the conduct of Jablonski and Prudential-Bache amounted to fraud under the Arizona Securities Law, breach of fiduciary duty, common law fraud, negligence, consumer fraud under Arizona law, violations of the Arizona Racketeering Statute and breach of contract.

Prudential-Bache and Jablonski alleged that they acted at all times in Burke's best interests. Prudential-Bache and Jablonski alleged that Burke received confirmation of all trades and monthly account statements. Jablonski also sent copies of these to Burke's accountant and attorney and in doing so Jablonski clearly demonstrated that he acted in Burke's best interest.

As to the options traded in Burke's account, Prudential-Bache and Jablonski alleged that these were covered calls which are the most conservative and safe methods of trading options. Prudential-Bache and Jablonski alleged that Burke signed an options amount form which described the nature and risks inherent in options transactions.

#### RELIEF REQUESTED

Burke requested rescission of all her investments, prejudgment interest, treble damages, punitive damages, costs and attorney's fees for a total claim in excess of \$3,000,000.00.

Prudential-Bache and Jablonski requested that the claim be dismissed in its entirety and all costs charged to Burke.

#### 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.

Prudential-Bache and Jablonski did not file executed submissions to arbitration. The panel found that they were obligated to arbitrate this dispute pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared at the hearing and testified, these parties are bound by the panel's determination on all issues submitted.

Before the hearing on September 12, in a pre-hearing conference, Prudential-Bache and Jablonski asserted a Motion in Limine as to certain evidence sought to be offered by Burke. The parties' counsel stipulated that Chairman J. Roland Franz alone could decide the motion without the input of the other panel members. The Panel Chairman heard the argument of counsel during the pre-hearing conference and determined to exclude the evidence. Thereafter, the full panel convened with the parties and the hearing began.

#### AWARD

After considering the pleadings, the testimony the evidence presented at the hearing, the parties' pre-hearing briefs and the parties' post-hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Burke is entitled to rescind her purchase of MFS Intermediate Bond Fund ("MFS") and shall tender all right and interest she retains in MFS to Prudential-Bache. Upon receipt of Burke's interest in MFS, Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$50,000 for her initial investment in MFS. Additionally, Prudential-Bache and Jablonski are jointly and severally liable for and shall pay damages to Burke as a consequence of the MFS investment in the amount of \$2,668.82 which sum shall be trebled to a total amount equal to \$8,006.46 pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

2. Burke is entitled to rescind her purchase of Prudential Bache Energy Plus Fund ("Energy Plus Fund") and shall tender all right and interest she retains in the Energy Plus Fund to Prudential-Bache. Upon receipt of Burke's interest in the Energy Plus Fund, Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$100,000.00 for her initial investment in the Energy Plus Fund. Additionally, Prudential-Bache and Jablonski are jointly and severally liable for and shall pay damages to Burke as a consequence of the Energy Plus Fund investment in the amount of \$24,464.12 which sum shall be trebled to a total amount equal to \$73,392.36 pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

3. Burke is entitled to rescind her purchase of First Capital Income and Growth Fund ("First Capital") and shall tender all right and interest she retains in First Capital to Prudential-Bache. Upon receipt of Burke's interest in First Capital, Prudential-Bache and Jablonski are jointly and severally assessed and shall pay to Burke the sum of \$50,000.00 for her initial investment in First Capital. Additionally, Prudential-Bache and Jablonski are jointly and severally liable for and shall pay damages to Burke as a consequence of the First Capital investment in the amount of \$19,974.47 which sum is to be trebled to a total amount equal to \$59,923.41 pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

4. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke as compensatory damages for her investment in Prudential-Bache High Yield Fund ("High Yield Fund") the sum of \$53,279.26 which sum is to be trebled to a total amount equal to \$159,837.78 pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

5. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke as damages for her investment in Prudential-Bache Government Plus Fund ("Government Plus Fund") the sum of \$32,361.34 which sum is to be trebled to a total amount equal to \$97,084.02 pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

6. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke for her investment in the Prudential-Bache High Yield Plus Fund ("High Yield Plus Fund") the sum of \$1,831.34. This sum shall not be trebled.

7. Prudential-Bache and Jablonski are jointly and severally assessed and shall pay to Burke the sum of \$35,000.00 which sum shall be trebled to

8. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$100,000 as punitive damages. This award of punitive damages was based upon the legal authorities cited in the parties' respective post-hearing briefs which the panel reviewed prior to rendering the award in this matter. The panel believed it had authority to entertain a request for punitive damages and found that these types of damages were warranted in this case under the facts and pursuant to the legal authorities it reviewed in the parties' respective briefs.

9. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$107,500.00 as reasonable attorney's fees pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

10. Interest at the rate of 10% per annum is awarded on the above total sum awarded Burke from and inclusive of the date the award is served on the parties to and inclusive of the date the award is paid in full.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit paid to the NASD by Burke. Prudential-Bache and Jablonski are jointly and severally assessed and shall reimburse Burke for this sum of \$1250.00. Additionally, Prudential-Bache and Jablonski are jointly and severally assessed and shall pay to the NASD the sum of \$9300.00 as additional Forum Fees.

Forum Fees were calculated on the basis of \$1000.00 per hearing session for nine (10) hearing sessions and \$300.00 for the single session pre-hearing conference.

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

Concurring Arbitrators' Signatures  
Name

J. Noland Franz  
Presiding Chairman/Public Arbitrator

Dated

Douglas E. Smith  
Panelist/Public Arbitrator

Dated

Raymond R. Wallage  
Panelist/Industry Arbitrator

3-6-72  
Dated

Date award served by the NASD: \_\_\_\_\_

8. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$100,000 as punitive damages. This award of punitive damages was based upon the legal authorities cited in the parties' respective post-hearing briefs which the panel reviewed prior to rendering the award in this matter. The panel believed it had authority to entertain a request for punitive damages and found that these types of damages were warranted in this case under the facts and pursuant to the legal authorities it reviewed in the parties' respective briefs.

9. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$107,500.00 as reasonable attorney's fees pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

10. Interest at the rate of 10% per annum is awarded on the above total sum awarded Burke from and inclusive of the date the award is served on the parties to and inclusive of the date the award is paid in full.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit paid to the NASD by Burke. Prudential-Bache and Jablonski are jointly and severally assessed and shall reimburse Burke for this sum of \$1250.00. Additionally, Prudential-Bache and Jablonski are jointly and severally assessed and shall pay to the NASD the sum of \$9300.00 as additional Forum Fees.

Forum Fees were calculated on the basis of \$1000.00 per hearing session for nine (10) hearing sessions and \$300.00 for the single session pre-hearing conference.

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

Concurring Arbitrators' Signatures

Name

J. Nolan Franz  
J. Nolan Franz  
Presiding Chairman/Public Arbitrator

3/16/92  
Dated

Douglas E. Smith  
Douglas E. Smith  
Panelist/Public Arbitrator

          
Dated

Raymond R. Wallage  
Raymond R. Wallage  
Panelist/Industry Arbitrator

          
Dated

Date award served by the NASD:

LIABLE

8. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$100,000 as punitive damages. This award of punitive damages was based upon the legal authorities cited in the parties' respective post-hearing briefs which the panel reviewed prior to rendering the award in this matter. The panel believed it had authority to entertain a request for punitive damages and found that these types of damages were warranted in this case under the facts and pursuant to the legal authorities it reviewed in the parties' respective briefs.

9. Prudential-Bache and Jablonski are jointly and severally liable for and shall pay to Burke the sum of \$107,500.00 as reasonable attorney's fees pursuant to the Arizona Racketeering Act, A.R.S. Section 13-2301, et seq.

10. Interest at the rate of 10% per annum is awarded on the above total sum awarded Burke from and inclusive of the date the award is served on the parties to and inclusive of the date the award is paid in full.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit paid to the NASD by Burke. Prudential-Bache and Jablonski are jointly and severally assessed and shall reimburse Burke for this sum of \$1250.00. Additionally, Prudential-Bache and Jablonski are jointly and severally assessed and shall pay to the NASD the sum of \$9300.00 as additional Forum Fees.

TEN? Forum Fees were calculated on the basis of \$1000.00 per hearing session for nine (10) hearing sessions and \$300.00 for the single session pre-hearing conference.

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

Concurring Arbitrators' Signatures  
Name

J. Noland Franz  
Presiding Chairman/Public Arbitrator

Dated

Douglas E. Smith  
Douglas E. Smith  
Panelist/Public Arbitrator

3/17/92  
Dated

Raymond R. Wallage  
Panelist/Industry Arbitrator

Dated

Date award served by the NASD: \_\_\_\_\_

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Burke

DISCIPLINARY REFERRAL  
91-00071

Name of Respondents

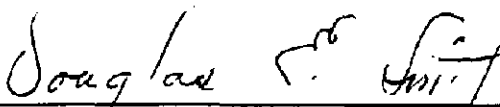
Prudential-Bache Securities, Inc.  
Jay R. Jablonski

DISCIPLINARY RECOMMENDATION

In the reference to NASD Arbitration No. 91-00071, the undersigned arbitrators hereby make a recommendation that the appropriate NASD District Office investigate the conduct of Prudential-Bache Securities, Inc. and Jay R. Jablonski regarding his dealings with Claimant Patricia Burke from the inception of the trading in her account at Prudential-Bache Securities, Inc. in February of 1988 until the termination of the account.

J. Noland Franz, Esq.  
Presiding Chairman/Public Arbitrator

Dated

  
Douglas E. Smith  
Panelist/Public Arbitrator

Dated

Raymond R. Wallage  
Panelist/Industry Arbitrator

Dated





N.A.S.D. AWARD

MAR 17 1992

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Burke

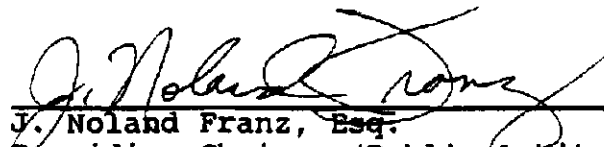
DISCIPLINARY REFERRAL  
91-00071

Name of Respondents

Prudential-Bache Securities, Inc.  
Jay R. Jablonski

DISCIPLINARY RECOMMENDATION

In the reference to NASD Arbitration No. 91-00071, the undersigned arbitrators hereby make a recommendation that the appropriate NASD District Office investigate the conduct of Prudential-Bache Securities, Inc. and Jay R. Jablonski regarding his dealings with Claimant Patricia Burke from the inception of the trading in her account at Prudential-Bache Securities, Inc. in February of 1988 until the termination of the account.

  
J. Noland Franz, Esq.  
Presiding Chairman/Public Arbitrator

3/16/92  
Dated

Douglas E. Smith  
Panelist/Public Arbitrator

                      
Dated

Raymond R. Wallage  
Panelist/Industry Arbitrator

                      
Dated

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

MAR 17 1992

In the Matter of the Arbitration Between

Name of Claimant

Patricia Burke

**DISCIPLINARY REFERRAL**  
91-00071

Name of Respondents

Prudential Bache Securities, Inc.  
Jay R. Jablonski

**DISCIPLINARY RECOMMENDATION**

In reference to NASD Arbitration No. 91-00071, the undersigned arbitrators hereby make a recommendation that the appropriate NASD District Office investigate the conduct of Prudential-Bache Securities, Inc. and Jay R. Jablonski regarding his dealings with Claimant Patricia Burke from the inception of the trading in her account at Prudential-Bache Securities, Inc. in February of 1988 until the termination of the account.

J. Noland Franz, Esq.  
Presiding Chairman/Public Arbitrator

Dated

Douglas E. Smith  
Panelist/Public Arbitrator

Dated

  
Raymond R. Wallage  
Panelist/Industry Arbitrator

3-16-92  
Dated