

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Clifford Sandberg

No. 91-00666

Name of Respondents

Prudential-Bache Securities, Inc.
Thomas Sachs

REPRESENTATION

For Claimant: James H. Anderson, Esq. of Salmen & Brinkman, P.A.

For Respondents: Kimberly Unger, Esq. of Prudential-Bache Securities, Inc.,
New York, New York.

CASE INFORMATION

Statement of Claim filed: March 1, 1991.

Claimant's Submission Agreement signed on: February 19, 1991.

Joint Statement of Answer filed by Respondents Prudential-Bache Securities,
Inc. and Thomas Sachs on: June 11, 1991.

The NASD does not have a record of any Submission Agreements filed by
Respondents Prudential-Bache Securities, Inc. and Thomas Sachs.

HEARING INFORMATION

Hearing Date/Sessions: December 11, 1991. 2 Sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Clifford Sandberg ("Claimant") alleged violation of: Sections 12(2) and 15 of the Securities Act of 1933; Sections 10 and 20(a) of the Securities Exchange Act of 1934, and Rules and Regulations promulgated thereunder, including Rule 10b-5; Chapter 80A of the Minnesota Securities Laws including Minn. Stat. Sections 80A.01 and 80A.03, made effective through Minn. Stat. Section 80A.23, and Rules and Regulations promulgated pursuant to Minn. Stat. Section 80A.25 including, but not limited, to Minn. Rule 2875.105; and Minn. Stat. Section 45.026. Claimant also alleged negligence, breach of fiduciary duty, and fraud against Respondents Thomas Sachs ("Sachs") and Prudential-Bache Securities, Inc. ("PBSI").

Claimant had alleged significant loss of money from his account while Sachs, the broker handling Claimant's account, was under the supervision and control of PBSI. The loss was alleged to have been caused by the fraudulent, illegal, unnecessary, repeated buying and selling of securities in Claimant's account. The types of stocks purchased were of a high degree of risk and were kept for very short periods, resulting in significant losses to the Claimant who was not a sophisticated investor, nor was he in a position, or age where high risk stocks would have been purchased on his behalf. Claimant also alleged reliance solely upon the advice and representations of Sachs for the purchase and sale of securities in Claimant's account. Claimant further alleged that Sachs misrepresented material facts upon which Claimant relied in regard to excessive trades and growth potential of the investments. It was also alleged that Sachs had never provided information as to the degree of risk of the investments, nor did Sachs provide a prospectus or other type of information on the stocks to the Claimant.

In their joint Statement of Answer, Respondents Sachs and PBSI denied each and every allegation contained in the Statement of Claim. Respondents Sachs and PBSI also asserted the following affirmative defenses:

1. Claimant authorized, accepted and/or ratified each of the transactions complained of in the Statement of Claim.
2. At all times relevant, Claimant's account was handled properly and in accordance with the "Know Your Customer" Rule of the New York Stock Exchange, Inc. and the "Suitability Rule" of the National Association of Securities Dealers as well as with other applicable rules and regulations.
3. Claimant's account was invested in accordance with his investment objectives.
4. Any losses sustained by Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on Respondents' part.
5. This claim is barred by the doctrines of waiver, estoppel and ratification.
6. Claimant has failed to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant prayed for award by the Arbitrators in his favor and against Respondents Sachs and PBSI, jointly and Severally, as follows:

1. Actual damages in an amount in excess of \$50,000.00;
2. Interest at the legal rate from January 31, 1989 on the damage award;
3. Reasonable costs and attorney's fees;
4. Punitive damages in an amount to be determined by the Arbitrators;
5. For such and further relief as the Arbitrators deem just and equitable under the circumstances.

Respondents Sachs and PBSI requested that the claim be dismissed in its entirety and that costs be awarded in its favor.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Sachs and PBSI did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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:

Claimant Clifford Sandberg is awarded a total of \$53,000.00 as set forth below:

(1) Compensatory Damages of \$38,000.00; and (2) legal fees and expenses of \$15,000.00. (a) Respondent Thomas Sachs is liable for, and shall pay to the Claimant Clifford Sandberg the sum of \$5,000.00 as satisfaction of the award of compensatory damages, legal fees and expenses against him. (b) Respondent Prudential-Bache Securities is liable for, and shall pay to the Claimant Clifford Sandberg the sum of \$48,000.00 as satisfaction of the award of compensatory damages, legal fees and expenses against Prudential-Bache Securities, Inc., except as follows below. The authority used by the panel for awarding legal fees to the Claimant is Minn. Stat. Section 80A.23

subdivision 2.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 Sessions x \$400.00 = \$800.00

Pursuant to Section 43c the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant Clifford Sandberg.

Pursuant to Section 43c of the Code of Arbitration Procedure, Respondent Prudential-Bache Securities, Inc. is liable for, and shall pay to Claimant Clifford Sandberg the sum of \$120.00 for filing fees, and \$400.00 for the hearing session deposit previously paid to the NASD by the Claimant.

Pursuant to Section 43c, Respondent Prudential-Bache Securities, Inc. is liable for the remaining hearing session fees in the amount of \$400.00.

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

Date:

January 27, 1992

/s/Peter W. Anson
Peter W. Anson
Chairman
Public Arbitrator

January 23, 1992

/s/Joseph Edward Olson
Joseph Edward Olson
Public Arbitrator

January 24, 1992

/s/Harold E. Gierke
Harold E. Gierke
Industry Arbitrator