

PUBLIC

**NASD**

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Katherine J. Smith

vs.

Case #  
91-00963

Name of Respondent

Prudential Securities Inc

REPRESENTATION

For Claimant: Bruce D. Johnson, Esq.

For Respondent: Debra Roth, Esq. of Phillips, Nizer, Benjamin, Krim & Ballon.

CASE INFORMATION

Statement of Claim filed: March 14, 1991.

Claimant, Katherine J. Smith's, Submission agreement signed on: March 11, 1991.

Statement of Answer filed by Respondent, Prudential Securities, Inc., on: July 11, 1991.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: March 12, 1992 - Two Sessions.  
March 13, 1992 - Two Sessions.  
March 26, 1992 - Two Sessions.  
March 27, 1992 - Two Sessions.  
March 30, 1992 - One Session.

Hearing Location: NASD - New York, New York.

CASE SUMMARY

Claimant alleged that subsequent to her retirement, she began using the retail brokerage services of Respondent to manage part of her investment

portfolio and her IRA. Claimant alleged that she told Respondent her investment objectives and not to take risks in her IRA. Claimant alleged that Respondent invested her portfolio in securities inconsistent with her investment objectives and that Respondent failed to provide her with prospectuses and failed to warn her of the risks associated with those investments. Claimant alleged that Respondent made an excessive number of trades in her account, solely to earn commission income. Claimant further alleged that Respondent executed trades in her account without her prior authorization.

Claimant alleged that Respondent fraudulently misrepresented to her that lower, preferential rates were charged to her account. Claimant alleged that Respondent fraudulently misrepresented the income produced by her portfolio, the actual market value of her portfolio and the capital gains she would realize. Claimant alleged that Respondent recommended highly speculative stocks in order to recoup losses in Claimant's account. Claimant alleged that Respondent recommended the sale of bonds before their maturity, causing her losses. Claimant alleged that Respondent failed to recommend appropriate investments for the funds she received from her Mother's estate.

Respondent maintained that Claimant's chief objective was to achieve significant capital gains in her portfolio. Respondent maintained that Claimant repeatedly told Marvin Tobias, her financial advisor at Prudential Securities that she wanted to achieve a high rate of return on her investments and that she was willing to speculate to do so.

Respondent maintained that Mr. Tobias recommended tax-free bonds, corporate bonds, unit trusts as well as various Prudential recommended stocks which Claimant purchased for her account. Respondent maintained that Claimant had her own investment ideas and chose many of her investments, contrary to the advice of Mr. Tobias. Respondent maintained that Claimant was very involved in the management of her account, received trade confirmations and monthly account statements which she discussed with Mr. Tobias. Respondent denies that the losses in Claimant's account reached \$141,000. Respondent maintains that they fulfilled all their obligations to Claimant.

#### RELIEF REQUESTED

Claimant requested monetary damages in the amount of \$225,000 plus interest from January 1, 1990, to the date of the award and punitive damages in the sum of \$1,000,000, plus reasonable attorney's fees and costs.

Respondent requested that the Statement of Claim be dismissed in its entirety, that Claimant be required to pay all forum fees and reasonable attorney fees and costs.

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 original remains 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 Securities, Inc., is hereby liable and shall pay Claimant, Katherine J. Smith, FORTY FIVE THOUSAND NINE HUNDRED AND FORTY THREE DOLLARS AND ZERO CENT (\$45,943.00);
2. Respondent is also liable to Claimant for interest at the rate of nine (9%) per annum, such interest shall accrue from the date of the award until the award is paid;
3. The claim for punitive damages is denied;
4. All parties shall bear their respective costs, including attorney's fees;

FORUM FEES

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


1. Claimant is assessed the \$250.00 non-refundable filing fee. The NASD shall retain the \$250.00 which was previously paid by Claimant;
2. Forum fees in the amount of \$9,000.00 for nine hearing sessions at \$1,000.00 per session are assessed. These fees shall be borne equally by Claimant and Respondent;
3. Total fees owed by Claimant, Katherine J. Smith, are \$4,500.00;
4. The total fees owed by Respondent, Prudential-Bache Securities, Inc., are \$4,500.00.

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

Concurring Arbitrators' Signatures

Name: Peter R. Cella

Public Chariperson

  
Peter R. Cella, Esq.

Name: Frank M. Suttell

Public

  
Frank M. Suttell

Name: Charles S. Werner

Industry

  
Charles S. Werner

Date of Decision: MARCH 30<sup>TH</sup> 1992