

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Charles Meltzer )

) Case No. 91-01139

Name of Respondent(s) )

Prudential-Bache Securities Inc. )  
Mark Finkel )

REPRESENTATION

Claimant, Charles Meltzer ("Meltzer") was initially represented by Mindy Felinton, Esq., but discharged her after two (2) sessions and was pro se for the remainder of the case.

For Respondents, Prudential Bache Securities, Inc. ("Prudential"), B.L. Loring ("Loring") and Mark Finkel ("Finkel"): Michael Arias, Esq. of Prudential.

CASE INFORMATION

Statement of Claim filed: April 9, 1991. Claimant's Submission Agreement signed: March 29, 1991.

Respondents' Statement of Answer filed: June 18, 1991. Respondents' Submission Agreements signed: June 17, 1991 by Finkel, and May 30, 1991 by Loring, and on June 17, 1991 by Kathy Klock on behalf of Prudential.

HEARING INFORMATION

On July 27, and November 16, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: violation of section 12 of the Securities Exchange Act of 1933; violation of sections 10(b) and 20 of the Securities Exchange Act of 1934; violations of NYSE and NASD Rules; breach of fiduciary duty; negligent misrepresentations; and, breach of implied covenant of good faith and fair dealing. Claimant alleged that Respondents conducted unauthorized trades and purchased risky mutual funds which were unsuitable for Claimant in light of his investment objectives and sophistication and that Respondents failed to advise Claimant of the risks of such investments.

Respondents denied all allegations of wrongdoing and alleged that: Claimant wanted investments that had a higher yield; all transactions were authorized; Claimant was advised of the risks involved; no discretion was exercised in Claimant's account; and, no misrepresentations were made.

Respondents alleged the affirmative defenses of: assumption of risks; market conditions caused Claimant's losses; ratification; waiver; estoppel; the losses were proximately caused by Claimant's actions and negligence; statutes of limitations; lack of due diligence; failure to state a claim; and, claims for economic damages are not allowable for tort claims.

#### RELIEF REQUESTED

Claimant requested rescission and damages in the amount of \$77,425.00, plus interest and costs.

Respondents requested dismissal of the claims.

#### OTHER ISSUES CONSIDERED & DECIDED

1. Claimant dismissed Respondent, Loring, with prejudice, at the hearing.
2. 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 and Finkel, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$16,250.00 inclusive of interest.
2. Claimants' request for costs is denied.

#### OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (four sessions x \$500.00 per session).
2. Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$500.00.

3. Respondents, Prudential and Finkel, are hereby assessed \$1,000.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/S/  
Steven D. Elias, Esq.

Public

/S/  
Anthony S. Paetro, Esq.

Industry

/S/  
Stephen G. Melcer, Esq.

Public

Date of Decision: January 6, 1993