

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants
Thomas Edward Hale
Karen Jean Hale

NASD Arbitration
No.91-01609

Name of Respondents
Prudential Securities, Inc.
Thomas Buschler

REPRESENTATION

For Claimant: James C. Krause, Esq. and M. Fariz Uvais

For Respondent: Edward S. Samson, Esq. - Prudential Securities Inc.

CASE INFORMATION

Statement of Claim filed: May 23, 1991

Claimants' Submission Agreements signed on: May 13, 1991

Joint Statement of Answer filed by Respondents, on: July 26, 1991

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions: February 27, 1992 - Two Sessions
February 28, 1992 - Two Sessions
July 16, 1992 - Two Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimants alleged that activities of Respondents in connection with the trading of securities in their account violated the suitability rule, constituted churning, and constituted negligence. Claimants claimed that on February 5, 1990 they deposited \$650,000.00 in an account with Respondents to be invested for approximately two years in accordance with a written plan proposed by Respondent Buechler and that, due to Respondents' investment recommendations, such funds were not invested in accordance with such plan or in accordance with Claimants' expressed investment objectives.

Respondents alleged that Claimant Thomas Hale was a knowledgeable and experienced investor, that Respondents fully disclosed to Claimants the nature, objectives and risks of the investments which they recommended, that the investments were suitable for Claimants and in accordance with their objectives as expressed to Respondents, and that trading in Claimants' account was not excessive. Respondents denied having made any misrepresentations to Claimants. Respondents alleged various affirmative defenses.

At the Hearing, the evidence did not support a claim of churning, and that claim was withdrawn. A large part of the requested damages were alleged to have resulted from trading in the common stocks of four issuers: Unisys Corp, Citicorp, Great American Bank and HomeFed Corp. Respondents alleged that part of such losses were incurred by Claimants at the time of the market crash in October 1990 in order offset taxable capital gains.

RELIEF REQUESTED

Claimant requested \$55,000.00 compensatory damages plus \$45,000.00 interest and such other award as the arbitrators deem just and appropriate.

Respondents requested dismissal of the claim in its entirety and an award of 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(s) 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. Claimants' claims for damages are dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

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

Respondents are jointly and severally assessed and shall pay to the NASD the sum of \$2,000.00 represent fees for four hearing sessions at \$500.00 each.

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

OTHER ISSUES

Over Claimants' objection, the panel ruled that Respondents' expert witness could be present throughout the hearing, including during testimony of Respondents' witnesses.

ARBITRATORS

Name

Franklin G. Allen, Esq.

Marjorie B. Newsom

Richard G. Brand

Public/Industry

Public Chairperson

Public

Industry

Concurring Arbitrators' Signatures

Marjorie B. Newsom

DATE SERVED: 08/12/92

Date of Decision: 7/16/92