

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Marjorie Annis
Expense Account, Inc.
Alyse O. Rankin
Neil J. Arrigale
Steve and Barbara Surrey
Roger Gordon and Barbara Arrigale

NASD Arbitration
No. 91-01673

Name of Respondents

Prudential Securities, Inc.
Grant Ross
Michael Zaccaro
Jack Graner

REPRESENTATION

For Claimants: Philip H. Stillman, Esq. - Schall Boudreau & Gore, Inc., San Diego, California

For Respondents: Prudential Securities, Inc. and Michael Zaccaro - Timothy N. Will, Esq. and Terry Ross, Esq. - Keesal Young & Logan - Long Beach, California

For Respondent: Grant Ross - William S. Greenawalt, Esq. - Bangser Klein Rocca & Blum - New York, New York.

For Respondent: Jack Graner - Martha Gooding, Esq. - Howard, Rice, Nemerovski, Canaday Robertson & Falk - San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 31, 1991

Claimant, Marjorie Annis' Submission Agreement signed: May 24, 1991

Claimant, Expense Account, Inc.'s Submission Agreement signed: June 4, 1991

Claimants, Steven and Barbara Surrey's Submission Agreement signed: June 3, 1991

Claimant, Alyse O. Rankin's Submission Agreement signed: June 3, 1991

Claimants, Gordon, Barbara and Neil Arrigales' Submission Agreement signed: November 7, 1991

Claimant, Steven Surrey's Submission Agreement signed: June 3, 1991

Statement of Answer filed by Respondent, Prudential-Bache Securities, Inc.'s filed: July 27, 1992

Statement of Answer filed by Respondent, Michael Zaccaro July 27, 1992

Statement of Answer and Motion to Dismiss filed by Respondent, Jack Graner, on July 31, 1992

Statement of Answer filed by Respondent, Grant Ross, on July 20, 1992

Respondent, Prudential-Bache Securities, Inc.'s Submission Agreement signed: September 15, 1992

Respondent, Grant Ross' Submission Agreement signed April 2, 1992

Respondent, Jack Graner's Submission Agreement signed August 5, 1992

Respondent, Michael Zaccaro's Submission Agreement signed on July 30, 1992

HEARING INFORMATION

Pre-Hearing Conference: January 27, 1993 - One Session
 April 23, 1993 - One Session

Hearing Dates/Sessions: May 10, 1993 - Two Sessions
 May 11, 1993 - Two Sessions
 May 12, 1993 - Two Sessions
 May 13, 1993 - Two Sessions
 May 14, 1993 - Three Sessions
 May 15, 1993 - Two Sessions
 May 17, 1993 - Three Sessions
 May 18, 1993 - Three Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant, Marjorie Annis (Annis), claimed against all Respondents for

- (a) directing and effecting excessive trades in Annis' account and churning said account for the primary purpose of producing substantial amounts of commissions;
- (b) directing and effecting unsuitable trades in Annis' account;
- (c) making and effecting unauthorized trades in Annis' account without having been granted formal discretionary authority and without implementing the appropriate procedures for handling discretionary accounts;
- (d) "parking" securities in Annis' trade account solely to increase the availability of leverage;
- (e) investing funds in speculative foreign currency bonds on margin notwithstanding Annis' express instructions to invest the money in a risk-free investment, and

- (f) Misrepresenting or omitting to state material facts concerning her investments to Annis.

Claimants, Steven and Barbara Surrey, alleged the above with the exception of count (d).

Claimant, Expense Account, Inc. alleged the above with the exception of Count (d).

Claimant, Alyse O. Rankin alleged the above with an additional claim for inducing Rankin to transfer her IRA account to Prudential-Bache, and then failing to open an IRA account for the rollover.

Claimants, Roger Gorden, Barbara Arrigale and Neal Arrigale alleged all the above with the exception of any claims relating to IRA accounts.

Respondents, Prudential Securities, Inc. and Michael Zaccaro, answering jointly denied each and every allegation of wrongdoing contained in the Statement of Claim and assert several affirmative defenses.

Answering the Marjorie Annis claim, Respondents alleged that Annis received confirmation slips for each trade and knew the confirmation slips represented trades in her account and thereby ratified the trades by not immediately complaining that she did not want said trades.

Answering the Expense Account, Inc. claim, Respondents alleged the officers of the corporation were sophisticated and knowledgeable investors and freely chose to trade in Australian and New Zealand bonds and have waived any right to complain about said trades.

Answering the Alyse O. Rankin claim, Respondent alleged that the investments made in her account met her stated investment objectives including long-term growth, income and speculation and that the new account documents did not show her desire to open an IRA account.

Answering the Roger Gordon, Barbara Arrigale and Neil Arrigale claims, Respondents alleged that the Claimants had sufficient intelligence and education background and sophistication to understand the transactions in their account and did not complain about any unauthorized activities until three years after their account was opened thereby ratifying all transactions at issue.

Respondent, John P. Graner, alleged that he had no personal involvement in any way with any of the customers who have brought these claims and had no knowledge of nor participated in any of the alleged wrongdoing.

Respondent, Grant Ross, denied that he is liable under any of the common law, legal duties, or statutory grounds set for in each claim. Ross also cross-claimed against Prudential-Bache, Zaccaro and Graner for indemnification.

RELIEF REQUESTED

Annis Claim

Actual damages to Annis of \$119,145.00, punitive damages of \$350,000.00, RICO damages of \$357,435.00, emotional distress damages of \$250,000.00, reimbursement of \$6,023.00 for tax liability incurred, \$81,002.00 in commissions paid, \$37,385.00 in lost opportunity costs, costs and attorneys' fees.

Rankin Claim

Actual damages of \$28,571.00, punitive damages of \$100,000.00, RICO damages of \$85,713.00, \$250,000.00 for emotional distress, reimbursement of \$17,423.00 for tax liability incurred, \$29,115.00 in lost opportunity costs \$15,330.00 in commissions paid, costs and attorneys' fees.

Roger Gordon, Barbara Arrigale Claims

Actual damages of \$105,045.00, punitive damages of \$500,000.00, RICO damages of \$315,140.00, \$250,000.00 for emotional distress, reimbursement of \$4,100.00 for tax liability incurred, \$58,560.00 in lost opportunity costs, \$112,659.00 in commissions, costs and attorneys' fees.

Neil Arrigale Claim

Actual damages of \$23,057.00 in portfolio losses, punitive damages of \$250,000.00, RICO damages of \$69,171.00, \$100,000.00 for emotional distress, \$1,491.00 in tax liability, \$6,755.00 for lost opportunity costs, \$3,080.00 in commissions, costs and attorneys' fees.

Expense Account, Inc Claim

Actual damages of \$121,646.96, tax liability according to proof, return of all commissions paid, punitive damages of \$365,000.00, RICO damages of \$364,940.00, costs and attorneys' fees.

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.

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. Respondents, Prudential Securities, Inc., Grant Ross and Michael Zaccaro are jointly and severally liable to Claimants as follows:
 - (a) To Marjorie Annis in the amount of \$66,748.00.
 - (b) To Steven Surrey and Barbara Surrey in the amount of \$20,355.00.
 - (c) To Roger Gordon and Barbara Arrigale in the amount of \$93,000.00.
 - (d) To Neil J. Arrigale in the amount of \$15,879.00.

(e) To Alyse O. Rankin in the amount of \$24,677.00.

All awards are inclusive of interest.

2. Each and every claim of Claimant, Expense Account, Inc., against all Respondents is dismissed.
3. Each and every claim of Claimants against John Graner is dismissed.
4. All RICO and conspiracy claims are dismissed.
5. The court in In re VMS Securities Litigation, No. 89 C 9448 (N.D. Ill., February 20, 1992) has ruled that Claimants are restrained from pursuing certain claims asserted in this arbitration. An appeal from such ruling is pending. If the appeal results in a final order freeing Claimants to pursue such claims, then Claimants shall be entitled to reopen this arbitration and pursue such claims. Otherwise, on motion of Respondents, such claims shall be dismissed upon termination of the appeal.
6. Respondent, Grant Ross, is solely liable for and shall pay to Claimant, Neil J. Arrigale, \$5,000.00 in punitive damages.
7. Respondent, Grant Ross, is solely liable for and shall pay to Claimant, Roger Gordon and Barbara Arrigale, \$3,000.00 in punitive damages.

Said punitive damages are awarded based on Todd Shipyards Corp v. Cunard Line, Ltd. (9th Cir. 1991) 943 F. 2nd 1056 at 1061-1063 and David L. Smith v. Prudential, et al. (April 14, 1993, unpublished decision of the California Court of Appeal, Fourth Appellate District Division One, Docket D016903, Super. Ct. No. 649485 and 649587, and cases cited therein.

8. The parties shall each bear their respective costs and fees, including attorneys' fees.
9. The NASD shall retain all filing fees and hearing session deposits made by the parties.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

Respondent Securities, Inc. is assessed and shall pay to the NASD the sum of \$19,600.00 representing two pre-hearing conferences at \$300.00 each, and nineteen regular hearing session at \$1,000.00 each.

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

ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

Signatures

Franklin D. Allen

Date of Decision: _____