

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Howard A. and Mildred T. Beeman

Case No. 91-01962

Name of Respondent(s)

Prudential-Bache Securities Inc.
Daniel Pesut

REPRESENTATION

For Claimants, Howard and Mildred Beeman ("Beeman"): Richard W. Groner, Esq., of Snyder, Groner & Schieb.

For Respondent, Prudential Securities, Inc. ("Prudential"): James Capezzutto, Esq., of Prudential.

For Respondent, Daniel Pesut ("Pesut") John Graves, Jr., Esq. of the Law Offices of John P. Graves, Jr.

CASE INFORMATION

Statement of Claim filed: June 25, 1991. Claimants' Submission Agreement signed on: June 20, 1991.

Respondents' Statement of Answer filed: October 1, 1991. Respondent, Prudential failed to file a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

Respondent, Pesut, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On August 13, 1992 and April 19, 1993, in Tampa, Florida, hearings lasting three sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for: violations of the rules and regulations of the National Association of Securities Dealers, the New York Stock Exchange, the Securities and Exchange Commission and internal rules and guidelines of A.G. Edwards and Sons, Inc., and Prudential Securities, Inc.; violations of Section 12(2) of the Securities Exchange Act of 1933,; violations of the Securities Exchange Act of 1934, 15 U.S.C. Section 78J(b) and 78T(a) and Rule 10(b)(5), 17 C.F.R. Section 240.10(b)(5); violations of Chapters 812 and 517 of the Florida Statutes; negligence; misrepresentation; and, breach of fiduciary duty. Claimants alleged that Pesut recommend the purchase of a certain mutual fund which was unsuitable for Claimants in light of their investment objectives.

Respondents denied all allegations of wrongdoing and alleged that: Claimants were advised of the risks involved and were advised of the sales charges; Claimants received a prospectus; Claimants were advised to move their funds into a money market but declined to do so; Claimants were experienced investors; Prudential owed no fiduciary duty to Claimants; and, the investments were suitable for Claimants.

Respondents asserted the affirmative defenses of: authorization; ratification; the account was handled properly and in accordance with all rules and regulations; any losses are attributable to market conditions; statutes of limitation; failure to state a claim; and, failure to mitigate damages.

RELIEF REQUESTED

Claimants requested damages in excess of \$40,000, plus punitive damages of \$10,000, interest, costs, and attorney's fees.

Respondents requested dismissal of the claim plus costs.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and pursuant to the Form U-4 executed by Respondent, Pesut. Pesut being a person associated with an NASD member firm, Prudential Securities, Inc., at the time this controversy arose, this Panel finds that Pesut and Prudential were required to sign Submission Agreements.

2. Prior to the commencement of the hearing on August 13, 1992, the NASD was advised that the Claimants had settled with Respondent, Prudential, and therefore, Prudential was dismissed, with prejudice, from this arbitration.

3. 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

1. 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:

2. Respondent, Pesut, is found not liable and, therefore, all claims against him are hereby dismissed.

3. Claimants' request for attorney's fees, costs, and punitive damages is denied.

4. Respondents' request for costs is denied.

OTHER COSTS

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 \$1,500 (three sessions x \$500 per session).

2. Claimants are hereby assessed \$750 for which the NASD shall retain the \$500 previously deposited in partial satisfaction thereof leaving a balance due of \$250 payable to the National Association of Securities Dealers, Inc.

3. Respondent, Pesut, is hereby assessed \$750 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$150 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
David A. Townsend, Esq.

Public

/s/
Warren A. Forest

Industry

/s/
Edward J. Adrian

Public

Date of Decision: May 24, 1993