

## 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(s)

C-Nahcioli Investment Club  
George R. Nahmi

91-02237

Name of Respondent(s)

Prudential Securities Inc  
Paul A. Bertsch

REPRESENTATION

For Claimant: James R. McIlvaine, Esq. of Palecek, McIlvaine & Paul Co.,  
L.P.A.

For Respondent: Peter Byer, Esq. of Prudential Securities, Inc.

CASE INFORMATION

Statement of Claim filed: July 19, 1991.

Claimant, C-Nahcioli Investment Club's, Submission Agreement signed on July  
17, 1991.

Claimant, George R. Nahmi's Submission Agreement signed on July 17, 1991.

Joint Statement of Answer filed by Respondents, Prudential-Bache Securities  
Inc. and Paul A. Bertsch, on September 18, 1991.

Respondent, Prudential-Bache Securities Inc.'s, Submission Agreement signed  
on September 17, 1991.

HEARING INFORMATION

Hearing Date/Sessions: May 14, 1992 - Two Sessions.

Hearing Location: NASD Offices - Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that they have maintained an account with Respondent, Prudential-Bache Securities, Inc. ("Prudential") for over ten years, and the account was maintained by Respondent, Paul A. Bertsch ("Bertsch"). Claimants alleged that Bertsch was informed that preservation of capital was their primary investment objective. Claimants alleged that approximately nine years after the account was opened, Bertsch recommended that Claimants invest in First Executive Corporation (First Executive) with the proceeds of a maturing CD. Claimants alleged that Bertsch guaranteed that First Executive would redeem the shares at \$25.00 per share in five years. Claimants purchased preferred stock at \$25.00 per share for a total investment of approximately \$100,000.00.

Claimants thereafter discovered shareholders disputes, past regulatory problems and the fact that the stock was not listed on the New York Stock Exchange. Claimants alleged that several months later, the stock price had dropped to \$22.00 per share and they instructed Bertsch to sell. Claimants alleged that Bertsch strongly advised them against selling because the stock price would likely rise in thirty days. Claimants alleged that Bertsch again assured them that the company was required to buy back the shares at \$25.00.

Claimants alleged that upon Bertsch's recommendation, they did not sell the stock and that several weeks later the stock price fell to \$6.00 a share. Claimants alleged that a year later the stock price was \$0.50 a share.

Claimants alleged that Respondents breached their fiduciary duty to them by recommending the investment with First Executive when they knew or should have known of the problems of First Executive, and knowing their conservative investment history. Claimants alleged that Respondents breached their fiduciary duty by refusing to honor Claimants' request to sell the stock and by convincing Claimants to retain the stock.

Respondents maintained that Claimants redeemed a CD for approximately \$94,000 and since interest rates dropped, Bertsch recommended that Claimants purchase shares of First Executive Series F Preferred Stock. Respondents maintained that this stock was rated AAA by Moody's rating service.

Respondents denied that Bertsch guaranteed to the Claimants that First Executive would buy back the preferred stock. Respondents maintained that Bertsch told Claimants that redemption of the preferred stock was anticipated in five years and that First Executive intended to create a sinking fund for this purpose. Respondents maintained that First Executive's stock was recommended by other brokerage houses as well.

Respondents maintained that Claimants did in fact have notice that they made a market in the stock by the \$0.25 per share mark up indicated in Claimants account statement and trade confirmation. Respondents also maintained that Claimants failed to mitigate their losses and that Claimant made the ultimate decision not to sell the stock. Respondents maintained that Claimants had months in which to sell their stock but they failed to, as the stock

continued to decline in price. Respondents maintained that Claimants received significant cash distributions from this investment.

RELIEF REQUESTED

Claimants requested damages in the amount of \$99,300.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Claimant be assessed the costs of this action.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the by-laws of the NASD, the arbitrators determined that Paul A. Bertsch was required to submit to this arbitration, notwithstanding his failure to submit an executed Submission Agreement. Therefore, Paul A. Bertsch is bound by this panel's rulings and determinations.
2. Respondents, Prudential-Bache Securities Inc. and Paul A. Bertsch, are jointly and severally liable and are hereby directed to pay to the Claimants the sum of \$56,500 (FIFTY SIX THOUSAND FIVE HUNDRED DOLLARS).
3. All parties shall bear their respective costs of this action, including attorney's fees.
4. All other claims and counterclaims, if any, are dismissed in their entirety.

FORUM FEES

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

1. Respondents are hereby assessed forum fees in the amount of \$1,150.00 (ONE THOUSAND ONE HUNDRED FIFTY DOLLARS) calculated as follows: \$150.00 non-refundable filing fee plus \$1,000.00 hearing session fees (\$500.00 x two hearing sessions).
2. Respondents are directed to reimburse to the Claimant the amount of \$650.00 that Claimant has already paid to the NASD. Respondents are further directed to pay the balance of the forum fees of \$500.00 to the NASD.

Concurring Arbitrator's Signature  
Jeffrey M. Bain, Esq.

Public Chairperson

Date of Decision June 18, 1992

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Concurring Arbitrator's Signature  
Sherry L. Bruce

Industry Arbitrator

Sherry L. Bruce

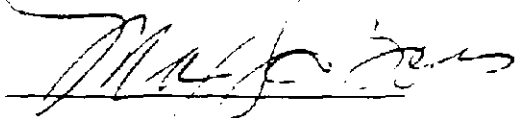
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Concurring Arbitrator's Signature  
Max Lebois



Public Arbitrator

Date of Decision June 18, 1992