

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley Golin & Richard Parker, TTEES

Case No. 91-02282

Name of Respondent(s)

Raymond James & Associates, Inc.
Prudential-Bache Securities Inc.
Russell Ketchum

REPRESENTATION

For Claimants, Stanley Golin ("Golin") and Richard Parker ("Parker"): Steven R. Reininger, Esq. of Rasco & Reininger.

For Respondents, Raymond James & Associates, Inc. ("RJ") and Russell Ketchum ("Ketchum"): Alex J. Sabo, Esq. of Morgan Lewis & Bockius.

For Respondents, Prudential Securities, Inc. ("Prudential") and Ketchum: Sara Soto, Esq. and Brian D. Elias, Esq. of Fowler, White, Burnett, et al.

For Respondent, Ketchum, for the Belmac Corporation issues: Burton W. Wiand, Esq. of Fowler, White, Gillen, Boggs, et al.

CASE INFORMATION

Statement of Claim filed: July 26, 1991 and amended March 10, 1992. Claimants' Submission Agreements signed: July 22, 1991 by Parker and July 23, 1991 by Golin.

Respondents, RJ and Ketchum's, Statement of Answer filed: September 20, 1991 and amended March 27, 1992. Ketchum's Supplemental Response filed: July 29, 1992. Respondents' Submission Agreements signed: September 16, 1991 by Ketchum and Dennis W. Zank on behalf of RJ.

Respondents, Prudential and Ketchum's, Statement of Answer filed: October 7,

1991 and amended April 29, 1992.

Respondent, Prudential, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On March 1; April 22, 23, 29 and 30; May 3 and 4; and August 2, 3, 4, 10 and 11, 1993, in Fort Lauderdale, Florida, hearings lasting 24 sessions were conducted.

CASE SUMMARY

Claimants alleged that: they opened accounts at Respondent, RJ, for the investment of funds of the Golin & Associates Inc. Employees Pension and Profit Sharing Trusts, for which they were the Trustees; although Claimants were businessmen, they were unsophisticated investors; the investment goals of the trusts, as expressed to all Respondents, were the preservation of the capital invested, long-term capital growth at low risk and a reasonable rate of return; in 1986, Respondent Ketchum, recommended investments in limited partnerships which he advised Claimants were safe and appropriate for the trusts; these investments were speculative, illiquid, subject to great risk and highly inappropriate investments for the trusts; the tax benefits of the limited partnerships are purposeless for tax exempt retirement accounts; in May 1987, Ketchum switched his employment to Respondent, Prudential, taking with him the trust accounts; Prudential knew that the retirement accounts were fiduciary accounts, and that the Claimants stated investment objectives were foremost; preservation of principal, with long-term growth at low risk and a reasonable rate of return; additional monies were invested at Prudential in limited partnerships and junk bonds which were speculative and illiquid investments not suitable for fiduciary accounts; as a result of the accounts' mishandling, Claimants were unable to exercise warrants in which a substantial profit existed; Prudential failed to supervise Ketchum; and, Respondents' action constituted common law fraud, breach of fiduciary duty, violation of federal and state securities laws, negligence and breach of contract.

Respondents, Prudential and Ketchum, denied all allegations of wrongdoing and alleged that: responsibility for any losses incurred belongs to Claimants, who at all times acted as Trustees for the accounts in question; as trustees, Claimants owed a high level of fiduciary duty to the trust; any loss incurred in Claimants' inability to exercise warrants lay beyond the scope of the parties' relationship since the warrants sprung from a private transaction; Claimants were fully informed as to the risks and rewards attendant to each and every investment which they chose for the trust accounts; all of the investments made were

consistent with the parameters set forth in the two trust agreements; Claimants were sophisticated businessmen capable of making investment decisions without the aid or assistance of Respondents; and, all investment decisions in connection with the trust accounts were made by Claimants who reviewed each and every investment thoroughly before deciding whether or not to make an investment.

Respondents, Prudential and Ketchum, alleged the affirmative defenses of: waiver, ratification and estoppel; statute of limitations; failure to state a cause of action upon which relief may be granted; ratification; laches; failure to act with due diligence in connection with investment decisions; the losses incurred were beyond Respondents' control; and, the NASD's lack of subject matter jurisdiction of this matter.

Respondents, RJ and Ketchum, denied all allegations of wrongdoing and alleged that Claimants were sophisticated investors; Claimants sought to invest in something other than equities, fixed income securities or mutual funds, where they would receive a return of 12% or greater; given these strict parameters, Respondents recommended limited partnerships; Claimants, acting in their fiduciary capacity, made the decision to buy the investments; and, that Respondents simply brought to Claimants' attention investments which could be accepted or rejected.

Respondents, RJ and Ketchum, alleged the affirmative defenses of the statute of limitations; non-mitigation of damages; waiver, ratification and estoppel; and, failure of Claimants to exercise due diligence as trustees and fiduciaries of the trusts.

Additionally, Respondent, Ketchum, alleged that he did not participate in the loan to Belmac Corporation other than to inform Claimants that this investment opportunity was available, and, therefore he is not liable for any losses incurred that are related to the Belmac Corporation.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$227,000 against RJ and Ketchum, jointly and severally, and compensatory damages in excess of \$1,575,000 against Prudential and Ketchum, jointly and severally, plus interest, costs, attorney's fees and punitive damages against all Respondents.

Respondents, Prudential and Ketchum, requested dismissal and costs.

Respondents, RJ and Ketchum, requested dismissal, costs and attorney's fees.

Respondent, Ketchum, requested dismissal of any claim relating to the Belmac Corporation, plus costs, expenses and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. At the conclusion of Claimants' case, Respondent, Ketchum, moved to dismiss the claim regarding Belmac Corporation. The Panel granted the Motion.
2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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, and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, RJ and Ketchum, are found not liable for the claims against them, jointly and severally, and, therefore, all claims against them are hereby dismissed.
2. Respondents, Prudential and Ketchum, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$600,000, inclusive of interest. This amount shall be reduced by 30% based on the Panel's finding of 30% comparative negligence, leaving a balance due to the Claimants in the amount of \$420,000.
3. Respondent, Ketchum, is also found liable and shall pay to the Claimants the further amount of \$50,000, inclusive of interest.
4. Claimants' requests for attorneys fees, costs, expenses and punitive damages are denied.
5. Respondents' requests for costs, expenses, and attorney's fees are denied.

OTHER COSTS

None.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$24,000 (24 sessions x \$1,000).
2. Claimants are hereby assessed \$12,000 for which the NASD shall retain the \$10,000 previously deposited in partial satisfaction thereof, leaving a balance due of \$2,000 payable to the National Association of Securities Dealers, Inc.
3. Respondents, Prudential and Ketchum, are hereby assessed \$12,000, jointly and severally, for which the NASD shall retain the \$10,000 in additional session deposits previously deposited by all Respondents in partial satisfaction thereof, leaving a balance due of \$2,000 to the National Association of Securities Dealers, Inc.
4. Respondents, Prudential and Ketchum, shall reimburse RJ the amount of \$5,000 for the additional sessions deposits paid by RJ.
5. The NASD shall retain the non-refundable filing fee of \$250 paid by the Claimants.

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

Concurring Arbitrators' Signatures
Name

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George R. Richards, Esq.

Public

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Peter J. Lavezzoli

Industry

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Arnold Sarrow

Public

Date of Decision: December 22 1993