

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Margaret C. Matthews

91-02338

Name of Respondent(s)

Dean Witter Reynolds, Inc.
Prudential-Bache Securities Inc.
Southwest Securities, Inc.
Robert F. Doviak, II

REPRESENTATION OF PARTIES

Claimant was represented by James Fox, Esq. and Peter J. Karabas, Esq. of Abramson & Fox, Chicago, IL.

Respondents Southwest Securities, Inc. and Robert F. Doviak, II were represented by James Flegle, Esq. and Marty A. Morris, Esq. of Bracewell & Patterson, Dallas, TX.

CASE INFORMATION

The Statement of Claim was filed on or about July 31, 1991.
Amended Statement of Claim filed on or about August 19, 1991.

Claimant's Submission Agreement signed on June 25, 1991 by Margaret G. Matthews.

Respondent Dean Witter Reynolds, Inc.'s Statement of Answer to Amended Claim and Motion to Dismiss filed on or about November 12, 1991.

Respondent Dean Witter Reynolds, Inc.'s Submission Agreement signed on November 7, 1991 by Jay M. Cutler.

Response of Southwest Securities, Inc. filed on or about October 11, 1991.

Amended Response of Southwest Securities, Inc. and Limited Response of Robert F. Doviak, II filed on or about November 9, 1991. Second Amended Response of Respondents Robert F. Doviak, II and Southwest Securities, Inc. filed on or about April 23, 1992.

Respondent Southwest Securities, Inc.'s Submission Agreement signed on October 3, 1991 by Raymond E. Woolridge.

Respondent Prudential Securities, Inc.'s Answer filed on or about October 16, 1991.

Submission Agreement of Respondent Prudential Securities, Inc. signed by Carlos Ricca on October 15, 1991.

HEARING INFORMATION

The hearing was held on Tuesday, June 2, 1992 for two (2) sessions, Wednesday, June 3, 1992 and Thursday, June 4, 1992 for two (2) sessions in Dallas, Texas for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondent Robert Doviak ("Doviak") defrauded her. Claimant specifically alleged that Doviak engaged in excessive and unsuitable trading in an account purportedly opened by Claimant for the purposes of Doviak's entry in the U.S. Trading Championship while at Respondent Dean Witter Reynolds, Inc. Claimant also alleged that Doviak's activities continued after he became employed at Respondent Southwest Securities, Inc. and later by Respondent Prudential Securities, Inc. Claimant alleged that while her account was at Southwest and Prudential she received an unusual number of "as of" confirmations. Claimant further alleged that her accounts were churned.

Claimant alleged that the above actions violated the following: Sections 10(b) and 15(c)(1) of the Securities Exchange Act and Rules 10(b)(5) and 15(c)(1-2); Sections 1, 2, 15(a), 18, and 27 of Article III of the NASD Rules of Fair Practice; their fiduciary duties to Claimant; common law fraud; negligence; Section 33 of the Texas Securities Act; and the Texas Deceptive Trade Practices Act.

Respondents Prudential Securities, Inc. and Robert F. Doviak denied the allegations set forth in the Statement of Claim. Respondents also stated that the transactions complained of were authorized and ratified by the Claimant. Respondents further stated that the Claimant received written confirmations on each and every transaction in her account and received monthly statements. Respondents Prudential Securities, Inc. and Robert F. Doviak asserted the following affirmative defenses: waiver, laches, estoppel, ratification, and the applicable statutes of limitation.

Respondent Dean Witter Reynolds, Inc. ("Dean Witter") denied the claims asserted against it in the Amended Statement of Claim. Dean Witter stated that prior to her opening an account at Dean Witter, Claimant and Mr. Doviak discussed Mr. Doviak's

participation in competitions. Dean Witter stated that Mr. Doviak had expressly advised Claimant that the strategies used were aggressive, risky and involved substantial transaction costs. Dean Witter also stated that the Claimant understood the risks and costs and agreed to the strategies. Dean Witter further stated that the trading was suitable for the Claimant in light of her substantial net worth and stated objectives. Dean Witter asserted the following affirmative defenses: the claims are barred by the applicable statutes of limitations; the doctrines of laches, estoppel, ratification and waiver; contributory negligence; assumption of the risk; and failure to mitigate.

Respondent Southwest Securities, Inc. ("Southwest") denied the allegations asserted against it in the Amended Statement of Claim and asserted the following affirmative defenses: the claims are barred by the applicable statutes of limitations; the doctrines of laches, estoppel, ratification and waiver; and contributory negligence. Southwest specifically stated that Mr. Doviak merely followed a strategy which was fully explained to and agreed to by the Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$317,317.00 which sum includes margin interest and commissions paid by the Claimant, treble damages under the Texas Deceptive Trade Practices Act, interest, costs, and attorney's fees.

Respondents Prudential Securities, Inc. and Robert F. Doviak requested that the claims asserted against them be denied in their entirety and that they be awarded costs.

Respondent Dean Witter Reynolds, Inc. requested that the claims asserted against it be dismissed.

Respondent Southwest Securities, Inc. requested that the claims asserted against it be dismissed and that it be awarded its' attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Robert F. Doviak, II did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing by the determination of the arbitration panel on all issues submitted.

The NASD was notified on or about May 29, 1992 that Claimant had settled that portion of her claims pertaining to Respondents Dean Witter Reynolds, Inc. and Prudential Securities, Inc.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety.
2. Each party shall bear its own costs, expenses, and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall refund the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Respondent Robert F. Doviak, II shall be and hereby is liable for and shall pay to the NASD the sum of \$6,000.00 (Six thousand dollars) as forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session.

The NASD shall retain postponement fees in the amount of \$1,000.00 previously deposited with the NASD by the parties.

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

Dated:

June 22, 1992

s/s Jonathan A. Pace, Esq.
Presiding Chair
Public Arbitrator

June 23, 1992

s/s Lisa R. Browning, Esq.
Public Arbitrator

June 24, 1992

s/s Henry Hermann
Industry Arbitrator