

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Robert and Candace Peck

91-02946

Name of Respondents

Prudential-Bache Securities Inc., now  
known as Prudential Securities Incorporated;  
Robbie DeRooy

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REPRESENTATION

For Claimants/Counter-Respondents: Robert and Candace Peck were represented by Robert Peck.

For Respondents/Counter-Claimants: Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated and Robbie DeRooy were represented by Kimberly Unger, Esq. of Prudential Securities Incorporated, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: September 23, 1991.

Claimants/Counter-Respondents Robert and Candace Peck's Submission Agreement signed on: September 17, 1991.

Statement of Answer and Counter-Claim filed by Respondents/Counter-Claimants Prudential Securities Incorporated and Robbie DeRooy on: December 26, 1992.

Prudential Securities Incorporated and Robbie DeRooy did not file an executed submission agreement, but answered, appeared and testified at the hearing and are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

### HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: May 8, 1992 for one (1) session.

Hearing Location: Houston, Texas

### CASE SUMMARY

Claimants/Counter-Respondents Robert and Candace Peck ("Pecks") alleged that as a direct result of poor and incomplete advice from the Respondent/Counter-Claimant Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated ("Prudential") and Robbie DeRooy ("DeRooy"), the Pecks sustained an avoidable loss of approximately \$75,000.00 on United Airlines ("UAL") securities between the dates of October 12, 1989 and October 24, 1989. Peck specifically alleged the following:

1. On October 12, 1989, with UAL common stock at approximately \$283.00 per share, Peck sold 10 uncovered October 250 PUT contracts for UAL which were scheduled to expire in six (6) trading days;
2. Although the trade was not "officially" recommended by Prudential, Peck's decision to take the risk was based somewhat on related recommendations by the "Star Group" to buy UAL common stock with a price target of \$300.00 per share, as conveyed by Peck's broker;
3. On Monday, October 16, 1989 when UAL stock opened 50 points down, Peck made a decision to hold the PUT options based on the suggestions and recommendations of Prudential, who never indicated to Peck that there was a high risk of a further, substantial downward movement;
4. On October 17, 1989 a further decline in UAL stock to \$198.00 per share occurred, increasing the cost to buy back the options to over \$50,000.00. Prudential, believing a "deal" would go through, suggested to Peck that he let the PUT options be exercised at \$250.00 per share, take delivery of the stock, hold and/or sell "CALL" options against the stock, whereupon Peck decided to hold the PUT for one more day;
5. On October 18, 1989, UAL stock traded between \$200.00 and \$186.00, closing at \$191.75 per share. The same strategy remained in effect, reinforced with a "BUY" recommendation by Prudential's "Star Group";
6. The PUT option was exercised on October 20, 1989 with the UAL stock trading between \$175.00 and \$165.00, closing at \$168.50;
7. On October 23, 1989, the 1000 shares of UAL stock exercised at \$250.00 was delivered while the "Star Group" was still recommending

holding the stock;

8. On October 24, 1989, more difficulties were announced at the opening of the market and the stock was trading at \$146.00 per share. Peck could not afford further losses and sold the stock for \$146.50.

Respondents/Counter-Claimants Prudential and DeRooy denied each and every allegation of wrongdoing in the Statement of Claim, alleging that:

1. The Pecks' account was at all times handled professionally and properly;
2. The Pecks were knowledgeable investors who were aware of the risks of writing puts and were aware that the price of UAL stock could fall below its October 16, 1989 level;
3. The Star Group's recommendations were based on the belief that a successful takeover of UAL would be accomplished;
4. The Pecks' loss in the UAL options was due primarily to the adverse market conditions unique to the takeover of UAL; and
5. The Pecks are dissatisfied customers who are attempting to turn Respondents into insurers against market risk by transferring to Respondents the risk of loss.

In addition, Prudential and DeRooy asserted the following affirmative defenses:

1. Peck authorized and/or ratified the transaction of which he now complains;
2. At all times Peck's account was handled in accordance with the "Suitability Rule" of the National Association of Securities Dealers, Inc.;
3. Peck's account was invested in accordance with their investment objectives;
4. Any losses sustained by Peck were attributable to market conditions and to his own investment decisions;
5. The claim was barred by the doctrine of waiver, estoppel and ratification;
6. The claim was barred by the applicable Statute of Limitations;
7. Peck failed to state a claim upon which relief can be granted; and
8. Peck failed to mitigate damages.

In addition, Prudential asserted a counter-claim for costs associated with defending this action.

#### RELIEF REQUESTED

Claimants/Counter-Respondents Robert and Candace Peck requested that the panel enter an award against the Respondents/Counter-Claimants Prudential Securities Incorporated and Robbie DeRooy in the amount of \$75,100.00, the amount of the loss for which Peck alleges Prudential is responsible.

Respondents/Counter-Claimants Prudential Securities Incorporated and Robbie DeRooy requested that the panel dismiss the claim in its entirety and award costs in their favor.

#### 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.

At the close of the Peck's case, Prudential and DeRooy presented a motion for judgement. The panel denied this motion and heard Respondent's evidence.

#### 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. Claimants/Counter-Respondents Robert and Candace Peck's Statement of Claim is hereby dismissed and denied in its entirety;
2. Respondents/Counter-Claimants Prudential-Bache Securities Inc., now known as Prudential Securities Incorporated, and Robbie DeRooy's Counter-Claim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: One (1) session x \$500.00 hearing session deposit = \$500.00

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$150.00 and the hearing session deposit of \$500.00 previously

deposited by Claimants Robert and Candace Peck.

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

CONCURRING ARBITRATORS' SIGNATURES

Dated:

Gordon W. Hall  
Gordon W. Hall, Esq.  
Public Arbitrator  
Chairperson

July 9, 1992

Richard A. Hollenberg  
Richard A. Hollenberg  
Public Arbitrator

July 20, 1992

Ronald A. Simpson  
Ronald A. Simpson  
Industry Arbitrator

July 10, 1992

Date of Service on Parties:

July 27, 1992