

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Sherman & Rose Garland, JTWROS,  
Rose Garland as personal representative and  
Rose Garland as successor trustee

91-03070

Names of Respondents

Prudential-Bache Securities Inc.  
and Randy W. Brandt

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REPRESENTATION

Claimants were represented by Kurt M. Brueckner, Esq. and David Jordan, Esq. of Titus, Brueckner & Berry, Scottsdale, Arizona.

Respondents were represented by Charles W. Steese, Esq. and Keith Beauchamp, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National of Association Dealers Inc., ("NASD") on October 1, 1991.

Claimant, Rose Garland's Submission Agreement was signed on September 27, 1991. Claimant, Rose Garland's Submission Agreement as successor Trustee of the Sherman and Rose Garland Revocable Trust was signed on November 13, 1991. Claimant, Rose Garland's Submission Agreement as Personal Representative of the Estate of Sherman Garland signed on November 13, 1991.

A Statement of Answer and Motion to Dismiss was filed with the NASD by Respondent, Prudential Securities, Inc. on January 9, 1992.

A Statement of Answer was filed with the NASD by Respondent, Randy Brandt on February 8, 1993.

Claimants' Response to the Motion to Dismiss was filed with the NASD on January 24, 1992.

Respondents, Prudential Securities, Inc. and Randy Brandt did not file executed Submission Agreements with the NASD.

### **HEARING INFORMATION**

Pre-hearing conferences were held on April 8, 1993 for one (1) session, April 14, 1993 for one (1) session and April 15, 1993 for one (1) session.

The hearing took place on April 22, 1993 for two (2) sessions, April 23, 1993 for two (2) sessions, May 20, 1993 for two (2) sessions and May 21, 1993 for one (1) session.

The hearing location was Scottsdale, Arizona.

### **CASE SUMMARY**

Claimants, Rose Garland, surviving joint tenant, Rose Garland, personal representative of the Estate of Sherman Garland and Rose Garland as successor trustee of the Sherman and Rose Garland Revocable Trust ("Claimants") alleged that Respondent, Prudential Securities, Inc. ("Prudential"), through its agent, Respondent, Randy Brandt ("Brandt") engaged in excessive trading and churned Claimant's account. Claimants also alleged that Prudential, through Brandt, engaged in unauthorized trading, recommended and sold unsuitable investments, namely Emerald Homes stock, traded on margin which was unsuitable, and made numerous misrepresentations and omissions to the Claimants regarding the purchase and sale of securities.

Claimants also alleged that Respondent, Dean Witter Reynolds, Inc., ("Dean Witter"), through its agent, Respondent Brandt, from March 1988 through December 1989, churned Claimant's account, engaged in unauthorized trading, recommended and sold unsuitable investments to the Trust, namely Emerald Mortgage and Emerald Homes, traded on margins which was unsuitable, and made numerous misrepresentations and omissions to the Trust regarding the purchase and sale of securities.

Claimants alleged the following violations: Federal Securities Fraud under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5, Arizona Securities Fraud, Negligence, Violation of Article III, Section 2, NASD Rules of Fair Practice and NYSE Rule 405-the "Know Your Customer" Rule, violation of Article III, Section 1, NASD Rules of Fair Practice and NYSE Rule 401, violation of Article III, Section 15, NASD Rules of Fair Practice and NYSE Rule 408, violation of Article III, Section 27, NASD Rules of Fair Practice and NYSE Rule 342, fraud, constructive fraud, negligent misrepresentation, Breach of Fiduciary Duty, Breach of Trust and Breach of Agency, and Arizona racketeering.

Respondent Prudential generally denied the allegations asserted in the Statement of Claim. Prudential included a Motion to Dismiss in their Answer and alleged that the claim of churning, unauthorized trading, unsuitability, and material misrepresentations and omissions are time-barred.

Prudential alleged that the use of margin was not improper, and also alleged that at the time Claimant's accounts became margin accounts, standard customer agreements were executed authorizing the use of margin. Prudential also alleged that Claimants were fully aware of all the activity in their various accounts and they also received confirmations for each trade at the time that trade was executed. Prudential alleged that claimants claim for punitive damages must be dismissed.

In their response to the Motion to Dismiss filed by Prudential, Claimants alleged that none of the claims based on Arizona law are barred by the statute of limitations.

Respondent, Randy Brandt, in her Statement of Answer, limited her response to investments made by the Claimants between 1984 and March 1988, her tenure at Prudential, since Claimants dismissed all claims involving Dean Witter. Brandt alleged that Sherman Garland was an experienced investor. Brandt alleged that she never exercised any discretionary authority in the Claimants' account. Brandt also alleged that Sherman Garland was familiar with the broker's commissions charged for various investments. Brandt alleged that Claimants' account was not churned and the investments recommended were suitable. Brandt also alleged that punitive damages and treble damages, and attorneys' fees are not available under applicable law.

#### **RELIEF REQUESTED**

Claimants' requested actual damages of not less than \$140,562, in a specific amount to be proven at hearing against Prudential and Brandt, actual damages of not less than \$71,615, in a specific amount to be proven at hearing against Dean Witter and Brandt, treble damages and prejudgment interest for racketeering pursuant to A.R.S. Section 12-2314(A), interest on the principal invested at the legal rate of 10% from the date of Claimants' investments until paid, attorneys' fees, costs, expenses, punitive damages and such other relief as the arbitration panel deems appropriate.

Prudential requested that the claims be dismissed in their entirety and that they be awarded costs and attorneys' fees. Respondent Randy Brandt requested that the claims be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

During the pre-hearing conference with the arbitration panel on April 15, 1993, counsel for Claimants withdrew their federal claims. The panel also heard arguments on Claimants

Motion for Default against Randy Brandt. The panel denied the motion.

The panel also considered Respondents' Motion to Dismiss. The panel deferred ruling on the Motion to Dismiss until the time of the hearing.

Claimants settled their case against Dean Witter Reynolds, Inc. who were initially a Respondent in this case and also partially settled against Respondent Randy Brandt but only as to claims against her arising out of transactions in the Claimant's accounts at Dean Witter Reynolds, Inc.

Respondents Prudential Securities, Inc. and Randy Brandt, did not file with the NASD properly executed submissions to arbitration but they are required to submit to arbitration pursuant to section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing they are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed by 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion to Dismiss which was taken under advisement by the panel from the pre-hearing conference is hereby denied;
2. Brandt is liable for and shall pay to Claimants, without interest, the sum of ten thousand dollars and no cents, (\$10,000.00);
3. Claimants' claims asserted against Brandt for prejudgment interest, treble damages, punitive damages and attorneys' fees are denied and dismissed in their entirety;
4. Claimants' claims asserted against Prudential are denied and dismissed in their entirety; and,
5. Other than Forum Fees which are addressed below, the parties are each to bear their respective costs, expenses and attorney's fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. the NASD shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1000.00 previously paid to the NASD by the Claimants. Prudential and Brandt are assessed Forum Fees jointly and severally in the amount of \$9000.00. In addition, Brandt and Prudential are jointly and severally directed to reimburse Claimants for the amount of their \$1250.00 initial fee deposit with the NASD.

Forum Fees were assessed on the basis of \$1000.00 per hearing session for ten (10) hearing sessions. Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**Signatures of Concurring Arbitrators**

June 11, 1993  
Dated

/S/ Victor Wright  
Victor Wright  
Presiding Chair  
Public Arbitrator

June 21, 1993  
Dated

/S/ Sara Jo Dew  
Sara Jo Dew  
Panelist  
Public Arbitrator

June 11, 1993  
Dated

/S/ Bruce A. Lindvig  
Bruce Lindvig  
Panelist  
Securities Arbitrator

Date Award Served on the Parties June 25, 1993