

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Jill Pando, as trustee)	
)	Case No. 91-03182
)	
<u>Name of Respondent(s)</u>)	
)	
Prudential-Bache Securities Inc.)	
Louis Edward Wollenweber)	
)	

REPRESENTATION

For Claimant, Jill Pando, Trustee ("Pando"): Susan Yoffee, Esq. of Fleming, Haile, Shaw & Gundlach, P.A.

For Respondents, Prudential Securities, Inc. ("Prudential") and Louis Edward Wollenweber ("Wollenweber"): Delmar C. Gowing, III, Esq. of Honigman Miller Schwartz and Cohn.

CASE INFORMATION

Statement of Claim filed: October 10, 1991. Claimant's Submission Agreement signed: October 24, 1991.

Respondents' Joint Statement of Answer filed: January 9, 1992. Respondents' Submission Agreements signed: July 23, 1992 by Wollenweber, and by Carlos Ricca on behalf of Prudential on July 22, 1992.

HEARING INFORMATION

On August 3 and 4, 1992, in Fort Lauderdale, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimant alleged that she is an unsophisticated investor with a high school education; that she is the trustee of her son's trust account which is the subject of this claim; that she opened a guardianship account for the benefit of her son, who was then incompetent as a result of an automobile accident; that upon her son regaining competence, she established a trust account for

his benefit; that Claimant invested in Quantum Portfolio Management, a discretionary account; that Claimant's investment objectives were conservative and low risk; that Respondents, through Wollenweber, made misrepresentations of and omitted to state material facts regarding termination of the Quantum program; that Claimant instructed Respondents to wind up the account in a specific way; and, that Respondents failed to follow those instructions thereby breaching their agreement and fiduciary duties to Claimant.

Respondents denied all allegations of wrongdoing and alleged that the investment decisions and administration of the account were dictated by the Quantum program; that Claimant either never gave the alleged instructions or, if she did, they were in violation of the rules of the program to which Claimant had agreed and could not be followed by Respondents; that Claimant was fully advised of the risks; and, that any losses incurred by Claimant were the result of her own investment decision to place funds in Quantum.

Respondents alleged the affirmative defenses of waiver, laches, estoppel, ratification and the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested damages in the amount of \$69,814.00, attorney's fees, pre-judgment interest at the rate prescribed by New York law, interest and costs.

Respondents requested dismissal and costs.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Prudential and Wollenweber, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees, costs and expenses are denied.
3. Respondents' request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (three sessions x \$500.00).

2. Claimant is hereby assessed \$750.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. in the amount of \$250.00.

3. Respondents are hereby assessed \$750.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/
Steven Goerke, Esq.

Public

/s/
Michael Lau

Public

/s/
Sidney I. Josepher

Industry

Date of Decision: August 25, 1992.