

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Doris Edelman

Case No. 91-03244

Name of Respondent(s)

Prudential-Bache Securities Inc.

REPRESENTATION

For Claimant, Doris Edelman ("Edelman"): Jan Douglas Atlas, Esq. and Howard N. Kahn, Esq. of Atlas, Pearlman and Trop, P.A.

For Respondents, Prudential Securities, Inc. ("Prudential"), Patrick Finley ("Finley") and Alvin B. Epstein ("Epstein"): Samuel A. Keesal, Jr., Esq., John R. Loftus, Esq. and Elizabeth P. Beazley, Esq. of Keesal, Young & Logan.

CASE INFORMATION

Statement of Claim filed: October 16, 1991 and superceded by the Amended Statement of Claim filed on December 9, 1992, which removed Respondents Finley and Epstein as parties. Claimant's Submission Agreement signed: October 11, 1991.

Respondents' Statement of Answer filed: December 31, 1991 and superceded by the Amended Statement of Answer and Counterclaim filed on January 6, 1993. Respondents' Submission Agreements signed: November 11, 1991 by Epstein, November 7, 1991 by Finley, and by Kenneth E. Meister on behalf of Prudential on December 19, 1991.

HEARING INFORMATION

On March 16, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting 1 session was conducted via telephone conference call with an arbitrator.

On May 5, 6, 7; June 1; September 8, 9, 10, 13, 14, 15, 17, 20, 21, 22, 23, and 24, 1993, in Fort Lauderdale, Florida, hearings lasting 32 sessions were conducted.

CASE SUMMARY

Claimant alleged that as a result of Respondents' wrongful conduct Claimant's career was destroyed; that Claimant was a very successful broker with many clients; that in 1985, at which time Claimant was employed by Dean Witter Reynolds ("DWR") she was approached by Respondent who encouraged her to leave DWR in order to become employed with Respondent; that Respondent represented to Claimant that as long as she followed their guidelines and recommendations, they would stand behind her; that Claimant did follow Respondent's policies; that the general atmosphere which Claimant found at Prudential was one of intense pressure to generate commissions; that Claimant was hailed as a superior broker by Respondent and commended for her abilities; that, with the exception of a minor matter involving \$8,000.00, Claimant was never warned, disciplined or criticized by Respondent; that in April 1990, Shapiro, a client of Claimant instituted an arbitration proceeding against DWR, Claimant and Respondent; that Claimant was assured by Respondent's legal department that the defense of this claim was simple and unproblematic; that, despite Respondents' assurances, the AAA arbitration panel awarded Shapiro \$546,769.00 in compensatory and \$1,000,000.00 in punitive damages for the excessive trading of her account; that Claimant was discharged shortly after the Shapiro award was made public; that her termination was wrongful since all trades in the Shapiro account had been directed, reviewed, approved and ratified by Respondent; that as a result of these events, Claimant is unable to obtain other employment as a broker; that Claimant's income has dropped from approximately \$250,000.00 a year to zero; that Claimant's securities license is in jeopardy; that Claimant's health has deteriorated and her reputation has been destroyed; and, that Respondent's liability is premised upon fraudulent misrepresentation, estoppel, legal malpractice as to Respondent's representation of Claimant during the Shapiro arbitration and breach of fiduciary duty.

Respondent denied all allegations of wrongdoing and alleged that Claimant was terminated because of her mishandling of the Shapiro account; that Claimant's improper trading was never revealed to Respondent until after she had been terminated; that Claimant's motivation in filing suit reflects a continued attempt to blame others for her own dishonest conduct; that Respondent stood by Claimant one hundred percent, relying on her representations in support of their defense during the Shapiro arbitration, therefore, the claim for malpractice by the legal department is unfounded; that during the Shapiro arbitration, Claimant was exposed as a dishonest broker who abused the trust of her clients; and, therefore,

Respondents appropriately elected to terminate Claimant.

Respondent alleged the affirmative defenses of failure to state a claim upon which relief may be granted; at will employees may be terminated without good cause at any time; waiver; estoppel; non-mitigation of damages; Claimant's losses were proximately caused by her own conduct; and, recovery of punitive damages is barred as a matter of law.

Respondent filed a counterclaim, and alleged that as a result of Claimant/Counter-Respondent's mishandling of the Shapiro account and accounts of other customers who have filed, or may in the future file, complaints against Respondent, it has been damaged.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$5,000,000.00, punitive damages in excess of \$25,000,000.00, attorney's fees and costs.

Respondent requested dismissal of the Statement of Claim, compensatory damages of no less than \$1,500,000.00, and indemnification and/or contribution.

OTHER ISSUES CONSIDERED & DECIDED

1. Prior to hearing, on December 11, 1992, Respondents Epstein and Finley were dismissed with prejudice by Claimant.
2. At the beginning of the hearing, the Claimant's Motion to Dismiss the Counterclaim was denied.
3. At the conclusion of Claimant's case, Respondents' Motion to Dismiss was denied.
4. 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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Prudential, is found not liable for the claim of wrongful termination, and, therefore, those claims are hereby dismissed.
2. Respondent, Prudential, is found liable and shall pay to Claimant the amount of \$110,000.00, inclusive of interest, for providing inadequate legal representation to the Claimant in the Shapiro arbitration matter.
3. Claimant's request for attorney's fees and punitive damages are denied.
4. Claimant/Counter-Respondent, Edelman, is found liable and shall pay to the Respondent/Counter-Claimant the amount of \$90,000.00 inclusive of interest.

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 \$32,300.00 (1 pre-hearing conference x \$300.00 plus 32 sessions x \$1,000.00).
2. Claimant is hereby assessed \$16,150.00 for which the NASD shall retain the \$9,000.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$7,150.00 payable to the National Association of Securities Dealers, Inc.
3. Respondent/Counter-Claimant, Prudential, is hereby assessed \$16,150.00 for which the NASD shall retain the \$9,000.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$7,150.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fees of \$500.00 paid by the Claimant and \$500.00 paid by Respondent/Counter-Claimant.
5. The NASD shall retain the postponement fee of \$1,000.00 paid by Respondent/Counter-Claimant.

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

Concurring Arbitrators' Signatures
Name

John Darling

Chairperson/Industry

Peter J. Lavezzoli

Industry

Richard M. Kowalske

Industry

Date of Decision: _____

4-18-95