

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Susan Young and Clarice Roberts

91-03308

Name of Respondents

Prudential-Bache Securities Inc.
Earl R. Betts

REPRESENTATION

For Claimants, Susan Young and Clarice Roberts ("Young and Roberts"): Daniel R. Taylor, Jr., Esq. of Petree Stockton.

For Respondents, Prudential-Bache Securities, Inc. ("Prudential") and Earl R. Betts ("Betts"). J. Donald Cowan, Jr. Esq. of Smith Helms Mullis & Moore.

CASE INFORMATION

Statement of Claim filed: October 22, 1991.

Claimants' Submission Agreement signed on: August 27, 1991.

Respondents' Joint Statement of Answer filed on: December 30, 1991.

Respondent, Prudential, did not sign a Submission Agreement and Corporate Acknowledgment as required by Section 25 of the Code.

Respondent, Betts, Submission Agreement signed on: May 7, 1992.

HEARING INFORMATION

On January 25 and 26, 1993, in Greensboro, North Carolina a hearing lasting four sessions was conducted.

CASE SUMMARY

Claimants. alleged that when they opened their accounts with Respondents (Roberts in 1985 and Young in 1986) they were unsophisticated investors and that despite their modest financial worth and stated investment objectives of "income", Betts engaged in unsuitable options trading in their accounts. Claimants alleged that on or about November 28, 1988 a representative of Prudential met with Young and had her sign an uncompleted "Option Client Information Form and Agreement" which Claimants alleged contained false statements concerning Young's financial status and investment objectives. Claimants stated that at no time did Respondents explain to Young the inherent risk associated with the anticipated options transactions and that the Agreement falsely states that the Options Disclosure Booklet was sent 11/28/88. Claimants stated that no Option Disclosure Booklet was ever sent to Young and maintained that Respondents' actions resulted in substantial financial losses to Claimants.

Respondents denied all allegations of wrongdoing and stated that although the Statement of Claim is structured as one individual Statement of Claim it consists of two separate distinct Claims by two different individuals. Respondents maintained that the information on the Option Client Information Form and Agreement was completed before it was given to Young for her signature and that Young could have advised Respondents that there were errors on the form but that she did not do so because the information was correct. Respondents further maintained that the losses in Young's account were not due to Betts' options program but rather to market conditions outside and beyond the scope and control of Respondents. As to Roberts, Respondents stated that Roberts is not a feeble woman with no investment experience because at the time she opened her account she was the holder of a substantial amount of stock left to her by her late husband and that she advised Betts that she followed the earnings reports of the various securities she held and that she was aware of the stock market and had the ability to follow it and that Roberts made it clear to Respondents that she understood the risks of margin trading, accepted those risks and wanted to continue to trade on margin.

RELIEF REQUESTED

Claimants requested an award in the amount of \$300,000.00 plus interest, costs and attorneys' fees.

Respondents requested that the Statement of Claim be denied in its entirety and that costs of this proceeding and the defense thereof should be assessed against Claimants and awarded to Respondents.

OTHER ISSUES CONSIDERED & DECIDED

1. At the hearing, and without objection by Respondents' counsel, there was a defacto amendment of the Claim since Claimants, in oral argument asked for and introduced evidence pertaining to attorneys' fees.
2. 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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Prudential and Betts, are found liable jointly and severally, and shall pay to Claimant, Young, the sum of \$49,395.00 plus interest at 8% per annum from January 1, 1992 to January 26, 1993.
2. Respondents, Prudential and Betts, are found liable, jointly and severally and shall pay to Claimant Roberts, the sum of \$35,285.00 plus interest at the rate of 8% per annum from January 1, 1991 to January 26, 1993.
3. Respondents, Prudential and Betts are found liable, jointly and severally, and shall pay to Claimants Young and Roberts, the further amount of \$27,900.00 for attorney's fees pursuant to North Carolina Statutory authority, specifically, N.C. Statutes Section 78A-56.
4. Claimants' requests for punitive damages and costs are hereby denied.
5. All other claims are hereby denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees of \$3,000.00 (Four (4) hearing sessions X \$750.00).

1. Claimants are hereby assessed, jointly and severally, forum fees in the amount of \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited by Claimants. in partial satisfaction thereof leaving a balance of \$750.00 payable to the NASD by Claimants.
2. Respondents, Prudential and Betts, are hereby, jointly and severally assessed forum fees in the amount of \$1,500.00 payable to the NASD.

3. The NASD shall retain the \$200.00 non-refundable filing fee paid by the Claimants.
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Lynn R. Buzzard
(Public/Chairman)

/s/

Victor B. Taube
(Industry/Panelist)

/s/

Jeff R. Truluck, Esq.
(Public/Panelist)

Date of Decision: April 16, 1993