

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Holly B. Spencer

Case NO. 92-00712

Name of Respondent(s)

Prudential-Bache Securities Inc.
Ken Brown

REPRESENTATION

For Claimant, Holly B. Spencer ("Spencer"): Katherine Nathan, Esq. of Brandeis, Bernstein & Wasserman.

For Respondents, Prudential Securities, Inc. ("Prudential") and Ken Brown ("Brown"): Peter Byer, Esq. of Prudential.

CASE INFORMATION

Statement of Claim filed: February 27, 1992. Claimant's Submission Agreement signed: February 17, 1992.

Respondents' Statement of Answer filed: May 21, 1992. Respondents' Submission Agreements signed: March 18, 1993 by Brown, and on May 19, 1992 by Peter Byer on behalf of Prudential.

HEARING INFORMATION

On March 18 and 19, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for disregarding Spencer's investment goals by concentrating her investments in high risk securities and limited partnerships which were unsuitable for Claimant and by failing to diversify the investments in her account. Claimant alleged that Respondents were liable for: breach of contract; breach of fiduciary duty; fraud; and, under the doctrine of respondent superior.

Respondents denied all allegations of wrongdoing and alleged that: any losses were due to market forces and not the acts of Respondents; Spencer's account was diversified in accordance with her expressed desires; no misrepresentations were made by Brown; and, Claimant was provided with all relevant information.

RELIEF REQUESTED

Claimant requested damages in the amount of \$150,000, plus interest, punitive damages, attorney's fees and such other relief as the arbitrator's deem just and adequate.

Respondents requested dismissal of the Claim.

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 Brown, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$100,897 inclusive of interest.
2. Respondents, Prudential and Brown, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$40,350 for attorney's fees. This Panel bases its decision to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
3. Claimant's request for punitive damages is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000 (four sessions x \$750 per session).
2. Respondents, Prudential and Brown, are hereby assessed \$3,000, jointly and severally, \$750 of which shall be paid directly to the Claimant as a refund of the hearing session deposit

previously paid by Claimant, and \$2,250 of which shall be paid to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$200 paid by the Claimant.

4. Respondents, Prudential and Brown, shall, jointly and severally, reimburse the Claimant \$200 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

/s/
Ronald Thomas Spann, Esq.

Public

/s/
David P. Wardwell

Industry

/s/
Burt R. Rose

Public

Date of Decision: April 28, 1993