

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant(s)

Ben Butkus

Case No. 92-01431

Name of Respondent(s)

Prudential-Bache Securities Inc.

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**REPRESENTATION**

For Claimant, Ben Butkus ("Butkus"): Randall Henley, Esq. of Henley & Brabham.

For Respondent, Prudential Securities, Inc. ("Prudential"): Michael Arias, Esq. of Prudential.

**CASE INFORMATION**

Statement of Claim filed on: April 23, 1992. Claimant's Submission Agreement signed on: April 17, 1992.

Respondent's Statement of Answer filed on: July 24, 1992. Respondent's Submission Agreement signed on: July 23, 1992 by William Healy, Esq. on behalf of Prudential.

**HEARING INFORMATION**

On April 21 and 22, 1993, in Fort Lauderdale, Florida, hearings lasting four sessions were conducted.

**CASE SUMMARY**

Claimant alleged that Respondent was liable for: negligent misrepresentation; and, breach of fiduciary duty. Claimant alleged that Respondent did not inform him that option purchases were traded and did differently than other purchases of securities in a margin account and that Claimant did not have the ability to purchase said options without incurring the immediate liability of a margin call.

Respondent denied all allegations of wrongdoing and alleged that: Claimant was a sophisticated investor; Claimant wished to speculate; Respondent advised Butkus of the risks involved in trading options; and, Claimant's losses resulted from his desire to aggressively trade in options

during volatile market conditions.

Respondent alleged the affirmative defenses of: authorization; ratification; the losses are attributable to market conditions; statutes of limitations; laches; waiver; estoppel; failure to state a claim; failure to mitigate damages; and, assumption of risk.

#### **RELIEF REQUESTED**

Claimant requested damages in excess of \$100,000, plus interest, costs, punitive damages, and attorney's fees.

Respondent requested dismissal of the claim plus 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**

1. 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:
2. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's request for attorney's fees, costs, and punitive damages is denied.
4. Respondent's 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.

#### **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. Respondent is hereby assessed \$3,000 \$750 of which shall be paid directly to the 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.

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

Concurring Arbitrators' Signatures

/s/  
Robert D. Herschmann, Esq.

Public

/s/  
Bernard Finger

Industry

/s/  
Nicholas A. Natale

Industry

Date of Decision: May 24, 1993