

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Sylvia Shapiro

92-01597

Name of Respondent(s)

Prudential Securities Inc
David H. Sagerman

REPRESENTATION

For Claimant Sylvia Shapiro, individually and as Personal Representative for the Estate of Sol Gellman ("Shapiro"): Robert Ross, Esq. of the law offices of Robert C. Ross, Jupiter, Florida.

For Respondent, Prudential Securities, Inc. ("Prudential"): Debra Jenks, Esq. of Boose Casey Ciklin et al., West Palm Beach, Florida.

Respondent, David Sagerman ("Sagerman") was pro se.

CASE INFORMATION

Statement of Claim filed: May 8, 1992. Amended Statement of Claim filed March 19, 1993. Third Amended Statement of Claim filed May 6, 1996. Revised Third Amended Statement of Claim filed on May 10, 1996. Claimant's Response to Answer and Affirmative Defenses to Claimant's Revised Third Amended Statement of Claim filed June 18, 1996.

Claimant's Uniform Submission Agreement signed on: May 6, 1992.

Statement of Answer filed by Respondents, June 22, 1993. Answer and Affirmative Defenses to Claimant's Revised Third Amended Statement of Claim filed June 12, 1996.

Respondent Prudential's Submission Agreement signed on: July 9, 1992 by Richard Dziedziula on behalf of Prudential.

Respondent Sagerman's Submission Agreement signed on July 9, 1992.

HEARING INFORMATION

On October 23 and 24, 1996 in Ft. Lauderdale, Florida hearings lasting four sessions were conducted.

CASE SUMMARY

Claimant alleged initially in her Statement of Claim filed on May 8, 1992, that Respondents were liable for inducing her to purchase various limited partnerships without advising her of certain material facts. Claimant alleged in the initial Statement of Claim that Respondents were liable for: negligence; unsuitability; breach of fiduciary duty; fraud; failure to supervise; and, violations of NASD rules.

Claimant subsequently filed an Amended Statement of Claim (entitled Third Amended Statement of Claim wherein she alleged that Prudential, in its response to the Statement of Claim, alleged that Claimant directed the transfer of securities in certain account(s). Claimant alleged that, on March 10, 1993, Susan Finkelstein, Esq. ("Finkelstein") and Gail Axt ("Axt") filed a claim in Probate Court for the return of property that Claimant had allegedly improperly distributed, which property was the same property referenced in Prudential's Answer. Claimant alleged that Respondents were aware that the statements contained in Respondents' Answer were without basis in fact and that Respondents contributed to the rise of the Probate case by continuing to support those allegations.

Respondents denied all allegations of wrongdoing and alleged that the basis of Claimant's claim when originally filed was essentially the suitability of limited partnership units in her accounts which she purchased and/or inherited from Sol Gellman's Estate. During the arbitration proceeding, Prudential filed a pleading entitled, Respondents' Response to Claimant's Motion to Compel and Request for Pre-Hearing conference on October 16, 1992. Respondents alleged that, for all practical purposes, Claimant's original claims based upon her various limited partnership holdings were settled by way of class action settlements between the limited partnerships and Claimant directly without the necessity of an arbitration hearing.

On or about March 10, 1993, a claim was filed against Claimant in the Probate Division of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, by Sol Gellman's daughters, Finkelstein and Axt. The basis of the Finkelstein and Axt claim was completely and entirely unrelated to Prudential. Respondents alleged that, ultimately, Finkelstein and Axt settled their claims against Claimant and paid Claimant \$45,000.00 on or about March 13, 1995. Several months later, in May 1996, Claimant filed a Third Amended Statement of Claim and a Revised Third Amended Statement of Claim against Prudential. Claimant's Revised Third Amended Statement of Claim was completely unrelated to Claimant's original allegations based upon her limited partnership holdings and alleged that allegations made by Prudential in its pleading filed October 16, 1992 gave rise to the Probate Court case filed by Finkelstein and Axt.

RELIEF REQUESTED

Claimant originally requested: damages under Section 517.211 of the Florida Statutes in an amount equal to the out-of-pocket losses, or, in the alternative, rescission and the return of the \$44,500.00 investment, or, in the alternative, damages equal to what a properly managed account would have earned, plus interest, attorney's fees, costs, punitive damages not to exceed \$55,500.00. In Claimant's Third Amended Statement of Claim, Claimant requested damages in the amount of \$130,000.00 for loss of income, legal fees and expenses incurred in connection with the Probate matter

Respondents requested: dismissal of all claims.

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 original(s) remain on file with the NASD. >

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, the claims against them are hereby dismissed.
2. Claimant's request for costs, attorney's fees, interest, and punitive damages is denied.

OTHER COSTS

Other than the forum fees noted below, 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 in the amount of \$3,000.00 (\$750.00 x four sessions).

1. Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due the NASD of \$750.00.

Page - 4 -

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

Name

Public/Chairman

/s/
Lewis J. Levey, Esq.

/s/
Leslie Bishop

Industry

/s/
Alan Goldstein, Esq.

Public

Date of Decision: December 3, 1996