

9504144
N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Estate of Emma Jean Benbow

92-02163

Name of Respondent(s)

→ Shearson Lehman Hutton, Inc.
Prudential-Bache Securities Inc.
Matthew Stevens

REPRESENTATION

Claimant, the Estate of Emma Jean Benbow ("Benbow") was represented by John R. Kiefner, Jr., Esq. of Riden, Earle & Kiefner, P.A., St. Petersburg, Florida..

Respondent, Shearson Lehman Brothers, Inc. ("Shearson") was represented by William Hohausser, Esq. of Shearson, New York, New York.

Respondent, Prudential Securities, Inc. ("Prudential") was represented by Kathy Klock, Esq. of Prudential, New York, New York.

CASE INFORMATION

Statement of Claim filed: June 29, 1992. Claimant's Submission Agreement signed: June 22, 1992.

Respondent, Shearson's Statement of Answer filed: October 26, 1992. Respondent, Shearson's Submission Agreement signed: October 23, 1992.

Respondent, Prudential's Statement of Answer filed: October 29, 1992. Respondent, Prudential's Submission Agreement filed: October 25, 1992.

HEARING INFORMATION

On January 17, 18, and 19, 1995, in Tampa, Florida, hearings lasting 5 sessions were conducted.

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CASE SUMMARY

Claimant alleged that Respondents were liable for violations of: the Securities Act of 1933; the Florida Securities and Investor Protection Act; the Florida Racketeer Influenced and Corrupt Organizations Act; the Federal Racketeer Influenced and Corrupt Organizations Act; and common law theories of fraud, breach of good faith, breach of fiduciary duty, gross negligence and negligence.

Claimant alleged that Stevens convinced Mrs. Benbow to purchase risky limited partnerships by misrepresenting the safety, liquidity and suitability of those investments. Claimant alleged that Mrs. Benbow's age, income, and inexperience were inconsistent with the investments.

Respondent, Shearson, denied all allegations of wrongdoing and alleged that: all transactions were authorized by Mrs. Benbow; the investments were appropriate for Mrs. Benbow at the time they were recommended; Claimant failed to mitigate her damages; Respondent acted at all times in a professional and ethical manner and in accord with all governmental regulations

Respondent, Prudential, denied all allegations of wrongdoing and alleged that: none of the complained of transactions took place while Claimant had her account at Prudential; the Statement of Claim does not allege any wrongdoing against Stevens during the time he was employed at Prudential, nor does it allege any allegations of wrongdoing against Prudential. Prudential asserted affirmative defenses including: statute of limitations; and, the Economic Loss Rule.

RELIEF REQUESTED

Claimant requested rescission, plus damages in the amount of \$224,550.00 plus interest of 12 %, costs, attorneys fees, and punitive damages in the amount of \$449,100.00.

Respondent, Shearson requested dismissal of the claim plus costs and attorney's fees..

Respondent, Prudential requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

1. Prior to the commencement of this hearing, Claimant settled with Respondent, Prudential and, therefore, that Respondent is was dismissed with prejudice from this proceeding.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Shearson is found liable and shall pay to Claimant the amount of \$100,000.00, inclusive of interest.

2. Respondent, Stevens is also found liable and shall pay to Claimant the amount of

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\$4,000.00, inclusive of interest.

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 including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$5,000.00 (5 sessions x \$1,000.00 per session).

1. Claimant is hereby assessed \$2,500.00 for which the NASD shall retain the \$1,000.00 previously deposited by Claimant in partial satisfaction of such forum fees, leaving a balance due the NASD of \$1,500.00.

2. Respondent, Shearson is hereby assessed \$2,500.00 payable to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

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John Cullem, Esq.

Public /Chairman

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Vernon E. Allen

Public

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James Bruner

Industry

Date of Decision:

4-19-95