

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Beth Pressman

vs.

NASD #92-02586

Name of Respondents

Prudential Securities, Inc.,  
Bateman Eichler, Hill Richards, Inc.  
Debra McLeod

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**REPRESENTATION**

For Claimant: H Thomas Fehn, Esq. of Fields, Fehn & Sherwin, of Los Angeles, California

For Respondents [Prudential Securities, Inc. (PSI) & Debra Rada aka Debra McCleod  
[McLeod]: - Patricia Fitzpatrick, Esq. of New York, New York.

[Bateman Eichler, Hill Richards (BEHR)]: Paul Poareo, Esq. & John  
Rewinski, Esq. of Kindel & Anderson of Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed: August 4, 1992

Claimant's Submission Agreement signed: August 18, 1992

Statement of Answer filed by Respondents on:

PSI:	December 14, 1992
Debra MacLeod:	December 14, 1992
BEHR:	October 5, 1992

Respondents' Submission Agreements signed on: Respondent Debra McLeod did not file a Submission Agreement, but filed an Answer and appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

PSI: December 16, 1992  
BEHR: October 29, 1992

### **HEARING INFORMATION**

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: June 8, 1993 (two sessions)  
June 9, 1993 (two sessions)

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Claimant alleged: lack of suitability, churning, misrepresentation, failure to supervise and breach of fiduciary duty in the purchase of unspecified securities and options. Claimant was a 50 year old real estate agent who began handling her own finances after her marriage of 27 years ended in divorce. She had a high school education and no financial acumen.

Claimant's husband introduced her to Respondent McLeod and instructed that her objective was conservative investment. In the fall of 1990, McLeod left BEHR for PSI. McLeod recommended that Claimant purchase life insurance and hire a money manager. Claimant subsequently learned from another money management firm that her account was traded more actively and speculatively than she understood. Claimant was told she had a profit in her account of \$130,000 and later discovered she had paid approximately \$9,000 in commissions since the beginning of 1991. Claimant also received a margin call; she could not understand why a margin call had been issued.

Respondent BEHR denied all substantive allegations of the Statement of Claim and alleged: Claimant's account was opened on February 9, 1989 with her objective being "aggressive appreciation." She also completed a Customer Option Agreement in which the same objective was indicated and that she had extensive experience in stocks and bonds. Her liquid assets were stated as being approximately six million dollars. Her husband, Barry Pressman, was given a special power of attorney to buy and sell securities for Claimant's account. He made all investment decisions for Claimant's account from the time it was opened until it was transferred. Accordingly, BEHR cannot be held liable for any losses. The account was transferred to PSI on December 20, 1990. BEHR also asserted various affirmative defenses.

Respondents PSI and McLeod denied all substantive allegations of the Statement of Claim and alleged: Claimant indicated in writing that she had 10 years experience trading bonds and one year trading options. She gave her husband discretionary authority to buy and sell securities on her behalf. Her investment objective for her BEHR account was aggressive appreciation.

Claimant's account was only active at PSI for four months, from January to April of 1991, after which it was transferred. Confirmation trade tickets and statements were sent to Claimant on every transaction. An equity analysis double-checked by a securities analysis shows an out-of-pocket loss of \$115,692.09. It was only when the market moved against her that Claimant began to state that she did not understand the transactions.

### **RELIEF REQUESTED**

Claimant requested:

1. General damages of approximately \$650,000;
2. Punitive damages;
3. Interest on the general damages from date of loss; and
4. Costs of attorney's fees.

### **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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are dismissed;
2. The claim for punitive damages is dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

### OTHER COSTS

None.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$1,000 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Respondent BEHR for \$2,250

Respondent PSI for \$750

calculated as follows: Four hearing sessions at \$1,000/hearing session, equals \$4,000, minus \$1,000 already paid by the claimant as a hearing deposit. The \$3,000 balance is assessed as follows:

75% against BEHR and 25% against PSI

Fees are payable to the National Association of Securities Dealers,

### ARBITRATION PANEL

#### Name

#### Public/Industry

Elliott Finkel, Esq.

Public Arbitrator

Clifford Schiffer

Public Arbitrator

Maurice Schwarz

Industry Arbitrator

Concurring Arbitrators' Signature

DATE SERVED: 07/07/93

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Elliott Finkel respectfully dissents  
from the ruling as applied to BEHR.

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Clifford Schiffer

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Maurice Schwarz

Date of Decision: June 10, 1993