

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

John M. Falzone

Case No. 92-03622

**Name of Respondents**

Shearson Lehman Hutton, Inc.  
Prudential-Bache Securities Inc.  
Patricia M. Bottoms

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**REPRESENTATION**

For Claimant, John M. Falzone ("Falzone") Marvin Schiller, Esq. of Raleigh, N.C.

For Respondent, Shearson Lehman Hutton, Inc. ("Shearson"): Cary B. Sieber, Esq. of Shearson  
Lehman Hutton, Inc.

For Respondent, Prudential Securities, Inc. ("Prudential"): Marc S. Dobin, Esq. of Prudential  
Securities, Inc.

For Respondents, Patricia Bottoms ("Bottoms"), A. Ward McKeithen, Esq. and Stuart H.  
Johnson, Esq. of Robinson Bradshaw & Hinson, P.A.

**CASE INFORMATION**

Statement of Claim filed: 10/27/92.

Claimants' Submission Agreement signed: 10/23/92.

Respondents, Shearson's, Statement of Answer filed: 1/18/93.

Respondent, Prudential's Statement of Answer filed: 1/21/93

Respondent, Bottoms' Statement of Answer filed: 1/21/93.

Respondent, Bottoms' Submission Agreement signed: 1/21/93.

### **HEARING INFORMATION**

On May 3 and May 4, 1993 in Raleigh, N.C., a hearing lasting three (3) sessions was conducted.

### **CASE SUMMARY**

Claimant, alleged that he is an unsophisticated investor who is a paraplegic as a result of a devastating automobile accident and that he opened an account with the proceeds of the insurance settlement, and that Respondents purchased for his account, investments that were unsuitable in light of his investment objectives, that of low risk, safety of principal and steady income to support himself, and that Respondents misrepresented the investments. Claimant maintained that Respondents' actions constituted breach of fiduciary duty, constructive fraud and negligent supervision on the part of the firms.

Respondent, Shearson, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that all the investments in Claimant's account were conservative and that Claimant's primary objective was growth, not income and that all investments were consistent with said objective. Respondent, Shearson further maintained that Claimant participated in and authorized all investment decisions.

Respondent, Prudential, denied all allegations of wrongdoing contained in the Statement of Claim and alleged that all purchases for Claimant's account were conservative and consistent with Claimant's investment objectives. Respondent, Prudential further stated that each purchase was discussed with Claimant before hand and that Claimant was provided with prospectus for each fund in the account. Prudential maintained that Claimant's losses were due to forces beyond its control.

Respondent, Bottoms, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant participated in and authorized all investment decisions regarding his account, received monthly statements and that all investments made were consistent with Claimant's stated investment objectives. Bottoms further maintained that Claimant did not incur any actual losses in his account.

### **RELIEF REQUESTED**

Claimant, requested \$73,809.00 actual losses against Prudential and Bottoms; \$92,784.00 actual loss against Shearson and Bottoms; punitive damages of \$50,000.00 against each brokerage firm, costs and attorney fees.

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

1. Respondents, Shearson, Prudential and Bottoms, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's Claim for punitive damages is hereby denied.
3. Claimant's requests for attorneys' fees and costs are hereby denied.
4. All other claims are denied.

### **OTHER COSTS**

The parties shall each bear their own costs and expenses incurred 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 \$2,250.00 (three (3) hearing sessions X \$750.00).

1. Claimant is hereby assessed forum fees in the amount of \$750.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent, Shearson, is hereby assessed forum fees in the amount of \$750.00 payable to the NASD.
3. Respondent, Prudential, is hereby assessed forum fees in the amount of \$750.00 payable to the NASD.

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4. The NASD shall retain the non-refundable deposit of \$200.00 paid by Claimant.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/  
Thomas Steed, Jr., Esq.

Public/Chairman

/s/  
James Edward Neal

Public/Panelist

/s/  
Victor B. Taube

Industry/Panelist

**DATE OF DECISION: July 2, 1993**