

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Fernando Valverde

Case No. 92-04184

Name of Respondents

Prudential-Bache Securities Inc.  
Fernando G. Leyva

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**REPRESENTATION**

For Claimant, Fernando Valverde ("Valverde"): Dyanne E. Feinberg, Esq. of Gilbride, Heller & Brown.

For Respondents, Prudential Securities, Inc. ("PSI") and Fernando G. Leyva ("Leyva"): Delmer C. Gowing, Esq. of Honigman Miller Schwartz and Cohn.

**CASE INFORMATION**

Statement of Claim filed: December 14, 1992 and amended October 28, 1993.  
Claimant's Submission Agreement signed: December 8, 1992.

Respondents' Joint Statement of Answer filed April 5, 1993 and amended November 23, 1993. Respondents' Submission Agreements signed: April 1, 1993 by Leyva, and January 15, 1993 by Kathy M. Klock on behalf of PSI.

### **HEARING INFORMATION**

On January 5, 6 and 7, 1994, in Fort Lauderdale, Florida, hearings lasting 6 sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that Respondent Leyva engaged in unsuitable and excessive trading in his account with Respondent PSI. Specifically, Claimant contended that the stocks traded in his account were high risk, speculative securities which were unsuitable in light of his stated investment objective of safety of principal and his lack of prior experience in the stock market; that the purchase and sale of call and put options in his account were unsuitable and excessive in light of his investment objective and his lack of prior option experience and his lack of understanding of option trading; that Respondent Leyva fraudulently concealed material facts in connection with Centocor, Inc.; and, that Respondent PSI negligently supervised Leyva in permitting these fraudulent and negligent acts.

Respondents, PSI and Leyva, denied all allegations of wrongdoing and alleged that Claimant had prior investment experience and that he fully understood the risks of trading in stocks and options; that it was the Claimant who ordered the purchase and sale of various stocks and options in his account; that Claimant was acting on his own knowledge and the advice of his brother; that the trading in Claimant's account was suitable in light of Claimant's financial ability and goals; and, that the trading was not excessive. Respondents deny any fraud in connection with Centocor, Inc.

Respondents asserted a counterclaim in which they alleged that Claimant is liable on a debit balance to PSI.

### **RELIEF REQUESTED**

Claimant requested damages in excess of \$270,000 and punitive damages.

Respondents requested damages in the sum of \$42,689.59 and 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. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's request for punitive damages is denied.
3. Respondents' request for attorney's fees is denied.
4. Claimant/Counter Respondent is found not liable and, therefore, all claims against him are hereby dismissed.

### **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 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000 (6 sessions x \$1,000).
2. Claimant is hereby assessed \$1,000, for which the NASD shall retain the \$1,000 previously deposited in full satisfaction thereof.
3. Respondents are hereby assessed \$5,000, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$250 paid by the Claimant.
5. Respondents shall pay to the National Association of Securities Dealers \$500 for the non-refundable filing fee on their Counterclaim.

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

#### Concurring Arbitrators' Signatures

Name

151  
Allen Kilik, Esq.

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Bernard Finger

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James W. Geiger, Esq.

Date of Decision:

1/25/94