

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Charlene P. Mendoza

92-04291

Name of Respondents

Prudential-Bache Securities Inc.
Robert L. Gorman

REPRESENTATION

For Claimant: Charlene P. Mendoza ("Mendoza"): Joel Goodman, Esq. of Goodman and Nekvasil.

For Respondents: Prudential-Bache Securities, Inc. ("Prudential") and Robert L. Gorman ("Gorman"): Mark Dobin, Esq. of Boose Casey Ciklin Lubitz Martens McBane & O'Connell.

CASE INFORMATION

Statement of Claim filed: December 23, 1992 and amended on March 5, 1993. Claimant's Submission Agreement signed on: December 16, 1992 by Mendoza.

Statement of Answer filed by Respondents on: March 3, 1993. Respondent, Prudential's Submission Agreement signed on: August 10, 1993 by William Healy on behalf of Prudential. Respondent, Gorman failed to sign a Submission Agreement as required by Section 12 of the NASD Code of Arbitration Procedure ("Code").

HEARING INFORMATION

On October 26, 1993 and November 2, 1993 Pre-Hearing Conferences were held via telephone conference call with an arbitrator.

On December 15, 16 and 17, 1993 and January 22, 1994 in Tampa, Florida hearings lasting nine (9) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: violation of Florida Securities Act; breach of contract; common law fraud; breach of fiduciary duty; negligence and gross negligence; violations of the Florida RICO Act; violations of the Federal RICO Act; negligent supervision; violation of the NASD Rules of Fair Practice and Know Your Customer Rules; and, civil theft. Claimant alleged that Respondents churned her account and promoted and induced Claimant, through a series of omissions, misrepresentations and schemes to defraud, to continue to overly concentrate her portfolio in Qmax stock and enter into a series of unsuitable stock transactions which thereby caused her losses.

Respondents denied all allegations of wrongdoing and alleged that: Claimant makes no allegation of churning but only alludes to it in the Statment of Claim; Claimant obtained the Qmax stock prior to opening her account with Prudential; Claimant makes no specific allegations of any other unsuitable stock transactions; Chapter 517 of the Florida Statutes does not apply to this case; Claimant has not pled fraud with particularity; Gorman never told Claimant to refrain from liquidating her stock because he had inside information; and, all the activity in the account was consistent with Claimant's investment objectives.

Respondents asserted affirmative defenses including: failure to state a claim; statute of limitations; laches; good faith; lack of proximate cause; failure to plead fraud with particularity; the choice of law provision in the contract precludes an award of punitive damages or attorney's fees.

RELIEF REQUESTED

Claimant requested damages in the amount of \$113,539.73 plus costs, attorney's fees, interest, punitive damages, treble damages and RICO damages.

Respondents requested dismissal of the claim plus costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

1. 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.
2. Jurisdiction exists pursuant to Sections 12 and 25 of the Code. This panel finds that Respondent, Gorman was required to execute a submission agreement pursuant to Section 12 of the Code, Gorman being a person associated with an NASD member firm at the time this controversy arose.
3. This panel, in making its ruling herein, has considered Respondents' defenses of Statute of Limitations, laches, the economic loss rule and all other defenses.
4. Claimant's Motion for Sanctions and any cross-motions by Respondents are hereby denied.

AWARD

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

1. Respondents, Prudential and Gorman are found liable, jointly and severally, and shall pay to Claimant the amount of \$89,078 inclusive of interest.
2. Claimant's requests for attorney's fees, costs, punitive damages, treble damages and RICO damages are denied.
3. Respondents' requests for costs and fees are denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$7,350.00 (two prehearing conferences with an arbitrator x \$300.00 plus nine (9) sessions x \$750.00 per session).

1. Respondent, Prudential is hereby assessed \$7,350.00 of which \$750.00 shall be paid directly to Claimant as a refund of her hearing session deposit, leaving a balance due the NASD of \$6,600.00.
2. The NASD shall retain the \$750.00 previously deposited by Claimant in partial satisfaction of such forum fees.
3. Respondent, Prudential shall reimburse Claimant for the \$200.00 nonrefundable filing fee previously paid by Claimant.
4. The NASD shall retain the \$200.00 nonrefundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Gary M. Landau, Esq.

Public/Chairman

/s/
Alfred R. Priest

Public

/s/
Peter F. Crowell

Industry

Date of Decision: April 8, 1994