

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Marie Vogt

No. 93-00719

Name of Respondents

Prudential Securities Incorporated
Rosario J. Petrizzo

REPRESENTATION OF PARTIES

Claimant was represented by Steven Samson, Esq., Evanston, Illinois.

Respondents were represented by Steven M. Malina, Esq., of Prudential Securities Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 25, 1993

Claimants' Submission Agreement signed: February 13, 1993

Joint Statement of Answer filed by Respondent on or about: May 7, 1993.

Respondent Prudential Securities Incorporated's Submission Agreement signed on: April 7, 1993.

Respondent Rosario J. Petrizzo's response to the Amendment filed on or about: May 3, 1993.

HEARING INFORMATION

Hearing dates: December 7, 1993. Two (2) sessions.

December 8, 1993. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, Marie Vogt ("Claimant") alleged that Respondents, Prudential Securities Incorporated and Rosario J. Petrizzo ("Respondents"): Made unsuitable investments; engaged in churning of Claimant's account; made misrepresentations and omissions of material information; failed to properly supervise; violated principles of common law fraud; violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; violated the Illinois Securities Act; violated the Rules of the NASD; breached their fiduciary duty to the Claimant; violated Section 20 of the Exchange Act; and violated the Illinois Consumer Fraud and Deceptive Business Practices Act. The allegations arose out of transactions in securities more fully covered at the hearing in this matter.

In their joint Answer, Respondents, unless specifically admitted, denied each and every allegation contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. Claimant has failed to state a claim upon which relief can be granted.
2. Claimant expressly approved, participated in and ratified the acts and transactions that are complained of in the Statement of Claim. Claimant is accordingly barred from recovery in the action under the doctrines of waiver, estoppel, and ratification.
3. Claimant's claims are barred by the doctrine of laches.
4. Claimant's federal securities laws allegations are time barred. Similarly, Claimant's Illinois securities law claims are also time barred.
5. There is no private right of action for violations of the rules of the NASD.
6. Claimant is not entitled to any recovery against Respondents in this action because Respondents acted at all times in good faith and exercised reasonable diligence.
7. Claimant's plea for punitive damages cannot be awarded under applicable law. Claimant signed an Account Agreement Form with Prudential that clearly states that New York law will apply in any disputes. With respect to punitive damages, New York law is clear; it is inappropriate for an

arbitrator hearing a case where the parties have agreed to be bound by New York law to award punitive damages.

RELIEF REQUESTED

Claimant requested an award against the Respondents for:

- (a) Compensatory damages in excess of \$60,000.00 ;
- (b) Any additional punitive and consequential damages Claimant established at the hearing;
- (c) Interest at the legal rate, forum fees, attorney's fees and costs; and
- (d) Other proper and just relief.

Respondents requested that the arbitration panel dismiss Claimant's claims in all respects. Respondents further requested that the arbitration panel award them all of their attorneys' fees and costs incurred in connection with this matter.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 original(s) 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 Prudential Securities Incorporated and Rosario J. Petrizzo are jointly and severally liable for, and shall pay to the Claimant, Marie Vogt the sum of \$65,000.00 as satisfaction of all of her claims herein.
2. Claimant's claims for attorney's fees and punitive damages are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing session x \$500.00 = \$1,500.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,000.00 are assessed against Prudential Securities Incorporated.

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

CONCURRING ARBITRATORS

Dated:

Name:

December 8, 1993

/s/ Mark Miller
Mark Miller
Presiding Chair
Public Arbitrator

December 8, 1993

/s/Joan Steinman
Joan Steinman
Public Arbitrator

December 8, 1993

/s/Paul G. Snow
Paul G. Snow
Industry Arbitrator

Date of Service by the NASD: 12-9-93