

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Cynthia Ann Klapper, Individually,
and as Trustee for her Children,
Claimant,

v.

No. 93-01762

Prudential Securities Incorporated, and
Lewis J. Bair,
Respondents.

REPRESENTATION OF PARTIES

For Claimant Cynthia Ann Klapper, Individually, and as Trustee for her children ("Claimant"): Frank Lewis, Esq., of Begam, Lewis, Marks, Wolfe & Dasse, Phoenix, Arizona.

For Respondents Prudential Securities Incorporated and Lewis J. Bair ("Respondents"): Jesse B. Simpson, Esq., of Lewis and Rocca, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about April 30, 1993, and her Submission Agreement was signed on April 28, 1993.

Respondents' joint Statement of Answer was filed on or about September 8, 1993. Respondents' Submission agreements were signed on July 20, 1993, and September 29, 1993, respectively.

HEARING INFORMATION

Pre-hearing Conference dates: March 3, 1994. One (1) session.
March 24, 1994. One (1) session.

Hearing date: April 18, 1994. Two (2) sessions.
April 19, 1994. Two (2) sessions.
April 20, 1994. Three (3) sessions.
April 21, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that Respondents: Made unsuitable investment in her account; violated their fiduciary duty to the Claimant; misrepresented the nature and quality of various investments placed in Claimant's accounts; made excessive and unnecessary trading in the accounts for the purpose of creating commissions; violated both the Federal and State of Arizona RICO 18 USCA Section 1961 et seq., and Section 13-2301 ARS et seq.; and violated Section 10(b) of the Securities Act of 1934, 15 USCA 78j(b) and Rule 10b-5 promulgated thereunder, and article 13 of the Arizona Securities Act, Section 44-1991 ARS. The allegations arose out of transactions in Claimant's account involving securities more fully discussed at the hearing in this matter.

Unless specifically admitted in their Answer, Respondents denied each and every allegation set forth by the Claimant. In addition, Respondents asserted the following defenses: Mr. Bair's recommendations were suitable; Claimant's accounts were not excessively traded; Claimant controlled her accounts; Respondents did not act with the requisite scienter; Claimant failed to object to any trades during the life of the accounts, and had ratified all of the transactions; and that Claimant's statutory claims, Claim for punitive damages, Arizona RICO claims and claim for attorney's fees are barred under New York law.

RELIEF REQUESTED

Claimant requested the following award against the Respondents: Rescission; money damages; exemplary damages; treble damages; interest; attorney's fees; and costs incurred. The damages, prior to adding in the above-requested items, amount to more than \$100,000.00 but are less than \$500,000.00.

Respondents requested that the arbitration panel dismiss all of Claimant's claims, and award their reasonable attorneys' fees and costs.

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. Claimant's claims for RICO and exemplary damages are, and each of them, denied and dismissed with prejudice.
2. Respondents Prudential Securities Incorporated and Lewis J. Bair are, and each of them, jointly and severally liable for, and shall pay to Claimant, Cynthia Ann Klapper, Individually, and as Trustee for her children, the sum of \$75,000.00 as satisfaction of her claims herein.

OTHER COSTS

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

Respondents Prudential Securities Incorporated and Lewis J. Bair are, and each of them, jointly and severally liable for, and shall pay to the Claimant, Cynthia Ann Klapper the sum of \$1,250.00 as satisfaction of her claim for costs.

FORUM FEES

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

2 Pre-hearing Conference sessions x \$300.00 = \$600.00
9 Hearing sessions x \$1,000.00 = \$9,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall **RETAIN** the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Pursuant to Sections 30(b) and 43(c) the NASD shall retain the postponement fee in the amount of \$1,000.00 previously paid to the NASD by the Respondents. The retained forum fee shall be applied towards the additional forum fees assessed against the Respondents.

Additional Forum Fees in the amount of \$8,600.00 are assessed jointly and severally against the Respondents.

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

CONCURRING ARBITRATORS

Dated:

Name:

April 28, 1994

Thomas F. Tobin/s/
Thomas F. Tobin
Presiding Chair
Public Arbitrator

April 28, 1994

Gerald P. Long/s/
Gerald P. Long
Public Arbitrator

April 28, 1994

Oran R. Brown/s/
Oran R. Brown
Industry Arbitrator

Date of Service by the NASD: 5-6-94