

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

G. T. Wannamaker, M.D.

Claimant,

vs.

Case # 93-02922

Prudential Securities, Inc.
and Clarence Pate,

Respondents.

REPRESENTATION

For Claimant G. T. Wannamaker, M.D. ("Claimant") appeared John L. McDonald, Jr., Esq. from the law firm of Clawson & Staubes, Charleston, SC.

For Respondents Prudential Securities, Inc. ("Prudential") and Clarence Pate ("Pate") appeared Terry R. Weiss, Esq. from the law firm of Long, Aldridge & Norman, Atlanta, GA.

CASE INFORMATION

The Statement of Claim was filed on July 26, 1993 and Claimant's Submission Agreement was signed on July 14, 1993.

Respondents filed a Joint Statement of Answer on December 3, 1993. Respondent Pate's Submission Agreement was signed on August 17, 1993 and Respondent Prudential Securities, Inc.'s Submission Agreement was signed on March 17, 1993.

HEARING INFORMATION

Pre-Hearing Conference:	June 29, 1994	-	One Session
Hearing Dates/Sessions:	August 23, 1994	-	Two Sessions
	August 24, 1994	-	Two Sessions
	August 25, 1994	-	Two Sessions

The hearings were held at The Guest Quarters located at 6300 Morrison Boulevard, Charlotte, North Carolina, 28211.

CASE SUMMARY

Claimant alleged that he substantially relied on Respondents in handling his account because he had no knowledge in securities transactions and that he directed Respondent Clarence Pate ("Pate"), to follow a conservative investment strategy that would preserve capital. Claimant also alleged that although Respondent Pate assured him that he would follow a conservative strategy, Pate used his control over the Claimant's account to generate commissions for the Respondents without regard to the best economic interest of the Claimant. The claimant further alleged that the Respondents engaged in numerous acts of misconduct including, but not limited to, churning; unauthorized purchases; unsuitable investments in light of the Claimant's stated investment objectives; failure to disclose the risks associated with option trading; failure to deliver prospectuses for purchased securities; and the concealment of these improprieties.

The claimant asserted that as a result of the alleged activities the Respondent violated Rule 10 b-5 of the Securities Exchange Act and the South Carolina Unfair Trade Practices Act. The Claimant also asserted that the Respondents are liable for fraud, negligent misrepresentation, breach of fiduciary duty, breach of contract and that Respondent, Prudential Securities, Inc. ("Prudential"), is also liable for failing to supervise respondent Pate.

Respondents alleged that Pate, a registered representative employed by Prudential, was introduced to the Claimant during the summer of 1984; and that during this meeting the Claimant indicated that he was planning to retire and was interested in investment opportunities that would facilitate this retirement. Respondents also alleged that Respondent Pate sent a questionnaire to the Claimant in order to learn more about his investment goals and financial position, to which the Claimant responded that he had close to 20 years investment experience, owned two homes mortgage free, had a net worth of \$1,200,000.00, a liquid net worth of \$750,000.00, and an annual income of \$75,000.00. Additionally, it was alleged by the Respondents that the Claimant stated in the questionnaire that his principal investment objective was income, with secondary concern of long term growth, tax sheltered income and safety of principal.

Respondents alleged that in the Spring of 1985, pursuant to the Claimant's request, Respondent Pate provided the Claimant with prospectuses concerning a variety of investments and a selection

of preferred and common stock. Respondents alleged that the Claimant subsequently assembled a fixed income portfolio that included some, but not all of Respondent Pate's recommendations and opened an Prudential IRA account on or about June 17, 1985, so that his investment orders could be executed.

Respondents maintained that in early 1987, Claimant complained his account was not generating enough income and that he was interested in the writing of call options in order to generate income. Respondents maintain that Respondent Pate agreed that additional income may be generated by writing calls but informed Claimant that this strategy was not without risks which could generate losses in the account and/or result in having to sell the underlying stock. Respondents alleged that Pate sent the Claimant an option disclosure booklet, which the Claimant stated he had read and fully understood before signing a Option Client Information Form and Agreement on April 2, 1987. Respondent, Prudential, further alleged that in light of the Claimant's wealth and investment experience, Prudential approved the Claimant for option transactions.

The respondents maintained that the claimant approved every trade made in his account; that Respondent Pate discussed every trade in detail with the Claimant before it was made; and that confirmation slips for every trade and monthly account statements which described overall account holdings were sent to the claimant. The Respondents alleged Respondent Pate was in constant telephone contact with Claimant and met with the Claimant, at least quarterly, to discuss and review the portfolio and to have all account questions answered and that at no time did Claimant complain of any unauthorized activity in the account.

RELIEF REQUESTED

Claimant requested damages in the amount of losses he allegedly suffered in his account, believed to exceed \$300,000.00, plus treble damages, punitive damages, pre-judgement interest, attorneys fees, costs, and any other and further relief as may be just. Claimant also requested damages under South Carolina Code Section 35-1-1490 and 1500.

Respondents requested that all claims be dismissed in their entirety and that all costs of this arbitration be assessed against Claimant.

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 original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and

post-hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents Prudential Securities, Inc. and Clarence Pate be and hereby are denied.
2. All claims for treble damages be and hereby are denied.
3. All claims for punitive damages be and hereby are denied.
4. All claims for attorneys fees be and hereby are denied.
5. Each party shall bear their respective costs, including attorneys fees.
6. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee and \$1000.00 hearing session deposit and the following Forum Fees are assessed:

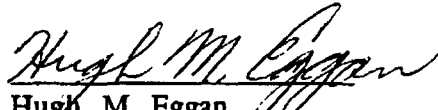
Pre-Hearing Conference Fee	\$ 300.00	(1 Session x \$ 300)
Hearing Session Fees	<u>\$ 6000.00</u>	(6 Sessions x \$1000)

Total Forum Fees \$ 6,300.00 - \$1,000.00 hearing session deposit = \$5,300.00

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,650.00 representing one-half of all outstanding forum fees.
2. Respondents Prudential Securities, Inc. and Clarence Pate be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2,650.00 representing one-half of all outstanding forum fees.

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

Concurring Arbitrators' Signatures


Hugh M. Eggan

Public Chairperson

Thomas S. Wallace

Public Panelist

John David Thomas

Industry Panelist

Executed on:
Date of Decision: ~~November 18, 1994~~

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