

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

Carol J. Clarke,

Claimant,

v.

NASD No. 93-03018

Michael A. Bronzino and Prudential-Bache
Securities, aka Prudential Securities, Inc.,

Respondents.

Representation

For Claimant: Cedric Choi, Esq.,
 Honolulu, Hawaii

For Respondent Prudential-Bache Securities (Prudential):

Gary Klein, Esq., Prudential,
New York, New York

For Respondent Michael Bronzino (Bronzino):

Michael Bronzino, Pro Se,
Princeton, New Jersey

Case Information

Statement of Claim filed on: July 30, 1993

Claimant's Submission Agreement signed on: July 30, 1993

Statement of Answer of Prudential filed on: December 30, 1993

Statement of Answer of Bronzino filed on: December 17, 1993, with a Supplemental Answer filed on April 28, 1994

Respondent Prudential 's Submission Agreement signed on: Did not file a submission agreement but was subject to NASD jurisdiction in accordance with NASD Code of Arbitration Procedure Section 12.

Respondent Bronzino's Submission Agreement signed on: December 17, 1993

Hearing Information

Prehearing Conference Date(s)/Sessions: October 11, 1994/one

Hearing Date/Sessions: April 20, 1995/two

Hearing Location: Honolulu, Hawaii

Case Summary

Claimant alleged negligence, breach of fiduciary duty and contractual duties, misrepresentation, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) of 1970 and violation of Section 10 (b) of the Securities and Exchange Act of 1934 concerning Claimant's purchase of options. In addition, Claimant alleged violation of Hawaii Revised Statutes (H.R.S.) Chapter 480, concerning unfair and deceptive business practices, and Chapter 842, concerning organized crime. Claimant alleged that at the time of the investment, she was 50 years old and disabled, and was primarily living on her disability income. She further alleged that the investment at issue represented the majority of her life savings.

Respondent Prudential denied all allegations of wrongdoing and maintained that Respondent Bronzino's actions did not fall within the scope of his employment with Prudential and that the legal concept of respondeat superior did not apply.

Respondent Bronzino denied all allegations of wrongdoing and denied the existence of a contractual or legal relationship between Claimant and Bronzino. Bronzino further alleged that he advised Claimant that trading options was extremely risky and that he encouraged her to abstain from options trading. Bronzino alleged that he informed Claimant the he was not a broker. He further alleged that he did not make any trades on Claimant's behalf. He maintained that he never recommended any specific options to Claimant.

Relief Requested

Claimant requested compensatory damages exceeding \$100,000, return of commissions paid, pre-judgment, post-judgment interest at the hearing, costs and expenses of arbitration, and expert

witness fees. Claimant also requested punitive damages, treble damages and attorney's fees.

Respondent Prudential requested that all of Claimant's claims be dismissed and that attorney's fees and costs be awarded in its favor.

Respondent Bronzino requested that all of Claimant's claims be dismissed and that attorney's fees and costs of suit be awarded in his favor.

Other Issues Considered and 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.

Prudential settled with Claimant prior to the commencement of the arbitration hearing.

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. Respondent Michael Bronzino is liable for and shall pay Claimant compensatory damages in the amount of \$7,952.64, representing fees paid by Claimant to Bronzino;
2. Respondent Michael Bronzino is liable for and shall pay Claimant prejudgment interest at the rate of 10 % per annum on the above amount from September 18, 1992 to the date of this award;
3. Respondent Michael Bronzino is liable for and shall pay Claimant post-judgment interest at the rate of 10% per annum to the date the award is paid;
4. Respondent Michael Bronzino is liable for and shall pay Claimant the filing fees paid by her in this case, as itemized in the Forum Fees Section of this award, below;
5. All other claims, including the claims for punitive and treble damages, are dismissed;
6. The parties shall each bear their respective attorney's fees;
7. The parties shall each bear their respective costs.

Arbitrator Stephen Gelber concurs in part and dissents in part. Gelber concurs in the finding in favor of Claimant, Carol J. Clarke, and also concurs in the part of the award requiring Respondent to reimburse Claimant for her filing fees. Gelber, however, respectfully dissents from the determination of damages by the majority, and would award compensatory damages in the amount of \$60,588.39, representing Claimant's actual net losses, plus prejudgment interest at the rate of 10% per annum from September 18, 1992, to the date of this award, plus post-judgment interest at the rate of 10% per annum to the date the award is paid.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$1,000 hearing session deposit and \$250 non-refundable filing fee previously paid by the Claimant. The correct hearing deposit and filing fee for this case involving a claim over \$100,000 are \$750 and \$200, respectively.

Respondent Michael Bronzino is assessed forum fees:

One non-refundable filing fee	= \$ 250.00
One prehearing session at \$300/session	= 300.00
Two hearing sessions at \$750/session	= <u>1,500.00</u>
Total fees assessed	= \$ 2,050.00

No adjournment fees were assessed.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Stephen Gelber	Public Arbitrator
Leon Munson	Public Arbitrator
Larry Jackson	Industry Arbitrator

Concurring Arbitrators' Signatures

Leon Munson



Larry Jackson

Dissenting Arbitrator's Signature

Stephen Gelber

Date of Decision:

Date Served: 6-5-95