

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Lafayette L. Draper,
Claimant,

v.

No. 93-03485

Prudential Securities Incorporated,
Respondent.

REPRESENTATION OF PARTIES

Jef Feibleman, Esq., of Burch, Porter & Johnson, Memphis, Tennessee, represented the Claimant, Lafayette L. Draper ("Claimant").

Robert S. Getman, Esq., Vice President, Associate General Counsel, Prudential Securities Incorporated ("Respondent") represented the Respondent.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about September 3, 1993. Claimant's Submission Agreement was signed on August 20, 1993.

Respondent's Statement of Answer was filed on or about November 5, 1993. Respondent's Submission Agreement was signed on November 3, 1993.

HEARING INFORMATION

Hearing date: June 28, 1994. Three (3) sessions.

Hearing Location: Memphis, Tennessee.

CASE SUMMARY

Claimant alleged that Respondent and its agents: Made misrepresentations and omissions; failed to comply with various rules, regulations and standards applicable to the securities industry; made unsuitable investments; and committed fraud. The allegations arose out of the sale of Sears Roebuck stock and the purchase of various limited partnerships more fully disclosed at the hearing.

In its Answer, Respondent generally and specifically denied each and every substantive allegation in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses:

1. The Amended Statement of Claim fails to State a claim upon which relief

can be granted.

2. Claimant, at all relevant times, had or should have had full knowledge of all material facts concerning the investments he made, including the nature of the investments and the associated risks.
3. Claimant directed and authorized the execution of all transactions in his account and, therefore, is estopped from bringing this action.
4. Claimant may not recover anything against Respondent because he ratified all of the activity in the account.
5. Respondent did not make any misrepresentations or omissions with respect to the investments made in Claimant's account.
6. Claimant knew of the alleged untruths and omissions and is therefore barred from bringing this action.
7. Respondent did not know, and in the exercise of reasonable care could not have known, of the alleged untruths and omissions.
8. To the extent any losses or diminution in the value of Claimant's investments have occurred, Respondent is not liable for such losses and diminution because they were within the risks Claimant chose to assume.
9. To the extent Claimant's investments have diminished in value, the result, in whole or in part, of the unforeseen price fluxuations in volatile securities markets (and the economy in general) in which Claimant knowingly and willingly participated.
10. The allegation relating to punitive damages are merely conclusory and fail to set forth facts sufficient to state a claim for recovery of such damages.
11. Arbitrators do not have the authority to award punitive damages.
12. Claimant's claims against Respondent are barred, in whole or in part, by the applicable statutes of limitation.
13. The purported wrongdoing on the part of Respondent was not the proximate cause of the losses for which Claimant seeks recovery.
14. Claimant has not incurred any legal damages arising from Respondent's actions.
15. Claimant's comparative fault, lack of diligence, and failure to conduct his own affairs reasonably, prudently and responsibly bar any recovery of damages.
16. Claimant is barred from recovery because he failed to mitigate his losses.
17. Claimant's claims fail because he has not sustained any loss or damage.
18. Claimant's claims fail because he did not justifiably rely upon any alleged misstatements or omissions by Respondent.
19. Claimant's accounts were not invested in contradiction to his investment objectives.

RELIEF REQUESTED

Claimants requested an award against Respondent in the amount of \$125,000.00 for compensatory damages plus pot-award interest and an appropriate award of attorney's fees. Further, Claimant

requested punitive damages in the sum of \$100,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimant and awarded in respondent's favor.

OTHER ISSUES CONSIDERED & DECIDED

On or about February, 1994, Respondent filed a Motion to Dismiss based on statutes of limitation. After reviewing the motion, the responses, and deliberation, the arbitrators denied the motion.

On or about June 9, 1994, Respondent filed a Motion to Dismiss a portion of the Statement of Claim. After reviewing the motion, the response, and deliberation, the undersigned arbitrators denied the motion.

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. Respondent, Prudential Securities Incorporated, is liable for, and shall pay to Claimant, Lafayette Draper, the sum of \$40,000.00 as satisfaction of his compensatory damages request.
2. Claimant's claims for interest and punitive damages are hereby, and each of them, denied and dismissed with prejudice.

OTHER COSTS

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

Respondent, Prudential Securities Incorporated, is liable for, and shall pay to the Claimant, Lafayette L. Draper, the sum of \$10,000.00 as satisfaction of his request for attorney's fees. The authority for the award of attorney's fees can be found in the Tennessee statutes.

Respondent, Prudential Securities Incorporated, is liable for, and shall pay to the

Claimant, the sum of \$950.00 as satisfaction of Claimants's request for costs.

FORUM FEES

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

3 hearing sessions @ \$750.00 = \$2,250.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$1,500.00 are assessed against the Respondent.

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

CONCURRING ARBITRATORS

Dated:

Name:

July 18, 1994

Raymond S. Clift/s/
Raymond S. Clift
Presiding Chair
Public Arbitrator

July 18, 1994

Ron W. McAfee/s/
Ron W. McAfee
Public Arbitrator

July 18, 1994

F. Grant Minor/s/
F. Grant Minor
Industry Arbitrator

Date of Service by the NASD: 7-19-94