

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the Matter of the Arbitration Between

James S. Kelly and Patricia A. Sullivan

Claimants,

v.

NASD No. 93-3858

Prudential Bache Securities and  
Robert J. Shull,

Respondents.

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***Representation***

For Claimants: Jules Federman of Investors Rights Association, Santa Barbara, California

For Respondents: E. Scott Douglas, Esq. of Keesal, Young & Logan, Long Beach, California

***Case Information***

Statement of Claim filed: September 17, 1993

Claimants' Submission Agreement signed: November 2, 1992

Statement of Answer filed on: February 7, 1994

Respondents' Submission Agreement signed on: Prudential Bache - February 14, 1994, Robert Shull - February 8, 1994

***Hearing Information***

Prehearing Conference Date(s)/Sessions: February 13, 1995/one

Hearing Date/Sessions: December 4 and 5, 1995/two sessions each day

Hearing Location: Los Angeles, California

### ***Case Summary***

Claimants alleged fraud, breach of fiduciary duties, negligence and breach of contract in the recommendation and purchase of First Executive Corporation (FE). Claimants also alleged negligent supervision, breach of the implied covenant of good faith and fair dealing and violations of National Association of Securities Dealers and New York Stock Exchange rules. Claimants further alleged that they purchased 3,000 shares of FE on October 12, 1989 and an additional 6,000 shares on October 16, 1989, on the recommendation of respondent Robert Shull, (Shull); less than two weeks later, Shull advised selling the entire 9,000 shares at a loss of more than \$25,000. Claimants argued that Shull did not inform them that respondent Prudential Bache Securities (PBS) was market maker in the stock, that he would earn a greater commission on the transaction and that there were potential problems with the company that could cause the stock price to drop.

Respondents denied all allegations of wrongdoing and alleged that claimants had previously been clients of Shull at Dean Witter and also maintained an account at Greenhill Securities in which they traded speculative penny stocks. Respondents alleged that as of May 1988, claimants' annual income was \$100,000 and estimated liquid net worth was \$70,000; they owned their own home, had five years of options trading experience, ten years' experience with stocks and bonds and stated their investment objective as speculative and long-term growth. Respondents maintained that claimants made substantial profits in short-term trading of stocks priced below \$15 per share. Respondents alleged that claimants exercised control over the account and all investment decisions and no discretion was used at any time; the fact that PBS was a market maker was clearly disclosed.

### ***Relief Requested***

Claimants requested:

1. Compensatory damages of \$25,000;
2. Compensatory damages for economic loss, less distributions;
3. Preaward and postaward interest;
4. Costs and attorneys' fees;
5. Punitive damages.

Respondents requested costs and expenses.

### ***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.

### ***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 Bache is liable for and shall pay claimants \$6,000 in compensatory damages;
2. Respondent Shull is liable for and shall pay claimants \$2,000 in compensatory damages;
3. All other claims are dismissed;
4. The claim for punitive damages is dismissed;
5. The parties shall each bear their respective attorney's fees;
6. The parties shall each bear their respective costs.

### ***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 retain the \$400 hearing session deposit previously paid by the claimant. Forum fees are assessed against the parties calculated as follows:

|   |    |       |
|---|----|-------|
| Total forum fees assessed (one prehearing session<br>@ \$300/session and four hearing sessions @ \$400/session) | \$ | 1,900 |
| Claimants' assessment   |    | 950   |
| Claimants balance due   |    | 550   |
| Respondents' joint and several assessment   |    | 950   |


Adjournment fees were assessed and paid.

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

***Arbitration Panel***

| <b><i>Name</i></b> | <b><i>Public/Industry</i></b> |
|--------------------|-------------------------------|
| Edward Kamenir     | Public                        |
| Richard Mannheimer | Public                        |
| Jeffrey Skogsbergh | Industry                      |

***Concurring Arbitrators' Signatures***

  
Edward Kamenir

\_\_\_\_\_  
Richard Mannheimer

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Jeffrey Skogsbergh

***Date of Decision:***

**Date served: 12/29/95**

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

***Arbitration Panel***

| <b><i>Name</i></b> | <b><i>Public/Industry</i></b> |
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Richard Mannheimer

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Jeffrey Skogsbergh

***Date of Decision:***

12/29/95

Date served: 12/29/95

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***Date of Decision:***

Date served: 12/29/95