

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Carolyn Greathouse

and

NASD Case Number 94-01958

Prudential Securities, Incorporated
and John Peterson

REPRESENTATION OF PARTIES

Claimant, Carolyn Greathouse was represented by Cynthia J. Thomson, Esq., Sole Practitioner, located in Houston, Texas.

Respondents, Prudential Securities, Inc. and John Peterson were represented by Gabriel Loubier, Esq. of Prudential Securities, Inc. located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 25, 1994.

The Submission Agreement of Claimant, Carolyn Greathouse was signed on May 19, 1994.

The Joint Statement of Answer was filed by Respondents, Prudential Securities, Inc. and John Peterson on or about September 20, 1994.

HEARING INFORMATION

A pre-hearing conference was held on August 24, 1995 before one (1) arbitrator for one (1) session.

The hearing was held on the following dates in Houston, Texas before three (3) arbitrators: August 29, 1995 for two (2) sessions, August 30, 1995 for three (3) sessions and August 31, 1995 for one (1) session.

CASE SUMMARY

In the Statement of Claim, Carolyn Greathouse ("Greathouse") alleged that she was a fifty-four year old widow who lost the bulk of her liquid assets as a result of the wrongful conduct of Prudential Securities, Inc. ("Prudential") and its employee, John E. Peterson, ("Peterson"). Greathouse alleged that the Respondents made unauthorized transactions in one of her accounts at Prudential including trading on margin, option trading and selling stocks short. The Claimant further alleged that the Respondents allowed brokers to trade the Claimant's account to generate commissions in return for

favors to such brokers, transferred stocks between the Claimant's various accounts at Prudential without her authorization, charged excessive commissions and continuously misled the Claimant regarding the management of her account. Greathouse claimed that she had no investment experience other than with mutual funds and certificates of deposit and she sought some way of generating income without disturbing principal. According to the Claimant, \$500,000.00 from her husband's life insurance proceeds were coaxed from her and liquidated by the Respondents in order to buy primarily low grade stocks and options on margin. Greathouse made several other specific allegations against the Respondents including, but not limited to, breach of contract, negligence, gross negligence, churning, breach of fiduciary duty, negligence supervisor and various violations of state and federal securities statutes.

In their Statement of Answer, Prudential Securities, Inc. and John Peterson denied each and every allegation made by the Claimant. Respondents contended that a purchase of 4,000 shares of Kinder Care Learning Centers on or about February 28, 1991 for a total of \$4,727.52 was unsolicited. The Respondents alleged that the only short sale in the account of 500 shares of Team Inc. for a total of \$4,345.82 on or about February 28, 1991 was unsolicited. The Respondents also alleged that the Claimant had executed an Options Agreement and a Margin Agreement giving authorization for options trading and margin trading and that the Claimant had submitted letters of authorization whenever she transferred funds from one account to another. The Respondents claimed that Greathouse, who had several accounts with Prudential, only complained about one account. Prudential and Peterson asserted the following affirmative defenses:

1. The Statement of Claim failed 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 she made, including the nature of the investments and the associated risks;
3. Claimant directed and authorized the execution of all transactions in her accounts and, therefore, is estopped from bringing this action;
4. Claimant, at all relevant times, maintained control of her account;
5. Claimant may not recover anything against Respondents because she ratified all of the activity in her account;
6. Respondents did not make any misrepresentations or omissions with respect to the investments in the Claimant's account;
7. Claimant had failed to allege any material misstatements or omissions so as to give rise to a cause of action for securities fraud;
8. To the extent any losses or diminution in the value of Claimant's investments have occurred, Respondents were not liable for such losses and diminution because they were within the risks Claimant chose to assume;
9. To the extent Claimant's investments had diminished in value, such diminution was the result, in whole or in part, of unforeseen price fluctuations in volatile securities markets in which Claimant knowingly and willingly participated;
10. Claimant's claims against Respondents were barred, in whole or in part, by the applicable statutes of limitation;

11. The purported wrongdoing on the part of Respondents was not the proximate cause of the losses for which Claimant seeks recovery;
12. Claimant had not incurred any damages arising from the actions of Respondents;
13. Claimant's comparative fault, lack of diligence and failure to conduct her own affairs reasonably, prudently and responsibly barred any recovery for damages;
14. Claimant was barred from recovery because she failed to mitigate her damages; Claimant's claims fail because she had not sustained any loss or damage;
15. Claimant's claims fail because she had not sustained any loss or damage;
16. Claimant's account was not invested in contradiction to her investment objectives;
17. The investments made by claimant were suitable for her in light of her financial situation and investment objectives;
18. Respondents were not liable for Claimant's alleged losses since they are not guarantors of Claimant's account;
19. Respondents were not fiduciaries for Claimant's account;
20. No private right of action exists for alleged violations of the know your customer rule and any other rule of the self-regulatory organizations; and
21. Claimant failed to plead the existence of a contract between Claimant and Respondents.

RELIEF REQUESTED

Claimant, Carolyn Greathouse requested an award in an undisclosed amount to include monetary losses, commissions, trading losses, attorneys' fees and costs of arbitration.

Respondents, Prudential Securities, Inc. and John Peterson requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The Respondents, Prudential Securities, Inc. and John Peterson, did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference. There were six (6) hearing sessions x \$750.00 plus one (1) pre-hearing session x \$300.00 = \$4,800.00 in forum fees. Pursuant to Section 43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant, Carolyn Greathouse. Respondents, Prudential Securities, Inc. and John Peterson, are hereby jointly and severally liable for and shall pay to the NASD the sum of \$4,050.00 in forum fees. The Respondents, Prudential Securities, Inc. and John Peterson, are hereby liable for, jointly and severally, and shall pay to the Claimant, Carolyn Greathouse, the sum of \$950.00 as reimbursement. **Fees are payable to the National Association of Securities Dealers, Inc.**

Arbitrators' Signatures:

Dated:

Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chairman

September 25, 1995

Richard P. Flake, Esq.
Richard P. Flake, Esq.
Public Arbitrator

September 25, 1995

Mobley E. Cox, Jr.
Mobley E. Cox, Jr.
Industry Arbitrator

October 9, 1995

Date served by the NASD: October 12, 1995