

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Estate of Alice E. Whitworth
Alice E. Whitworth Trust

94-02407

Name of Respondent

Prudential Securities Inc

REPRESENTATION

For Claimants, Estate of Alice E. Whitworth and The Alice E. Whitworth Trust ("Whitworth"):
George Franjola, Esq. of Allen, Dyer, Doppelt, Franjola & Milbrath, P.A., Orlando, Florida.

For Respondent, Prudential Securities, Inc. ("Prudential"):
Delmer C. Gowing, Esq. of Hertz, Schram & Saretsky, P.C., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: June 21, 1994.

Claimant's Submission Agreement signed: March 22, 1994, by Arthur Vandroff and Marlene Mattie as Co-Personal Representatives and Co-Trustees of the Estate and Trust of Alice E. Whitworth.

Respondent's Statement of Answer filed: October 26, 1994.

Respondent's Submission Agreement signed: November 11, 1994, by Laurie Giolito, Vice President, on behalf of Prudential.

HEARING INFORMATION

On July 25, 1995, in Ft. Lauderdale, Florida, a Pre-hearing Conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On September 11, 12 & 13, 1995, in Sarasota, Florida, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimants alleged that Alice Whitworth employed Richard Breck, who held himself out as a money manager, to manage her financial affairs; that Mrs. Whitworth gave Mr. Breck a power of attorney to perform his duties; that Mr. Breck with the knowledge and assistance of Mrs. Whitworth's Prudential broker, Robert Edwards, and the office manager, Joel Strodes, engaged in risky and unsuitable option and commodity trading; that during the period of time Mrs. Whitworth maintained an account at Prudential, Mr. Breck paid himself \$380,000.00 in management fees, \$165,000.00 of which was paid directly to him out of Mrs. Whitworth's accounts at Prudential; that during this period Prudential earned \$212,000.00 in commissions while Mrs. Whitworth had \$46,253.12 in trading losses on positions Mr. Breck opened and closed at Prudential; that Prudential breached its fiduciary duty with Mrs. Whitworth, breached its contract with Mrs. Whitworth and/or was negligent in its handling and supervision of her accounts.

Respondent denied all allegations of wrongdoing and alleged that during September, 1991, Alice Whitworth opened an account at Prudential; that at the time she opened the account, Mrs. Whitworth advised Prudential that she had her own investment advisor, Richard Breck; that Mrs. Whitworth executed proper documentation in order to allow Mr. Breck to have complete authority to use his discretion in trading her accounts; that the trades were made through Prudential's financial advisor, Robert Edwards, who took all of the directions from Mr. Breck; that notwithstanding this, Mr. Edwards had substantial communication with Mrs. Whitworth to ensure that her investment objectives were being met; that at the time of the arbitration, Alice Whitworth and Richard Breck were deceased; that as there was no testimony from any credible witness that the investment objectives of Mrs. Whitworth were not met, nor was there any evidence that Richard Breck was paid monies in excess of those that Mrs. Whitworth intended him to have. Respondent further alleged that Claimants failed to prove any unsuitable, unauthorized trades or churning in Mrs. Whitworth's account.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$495,022.75 representing a return of the commissions earned on the accounts and the management fees paid from her accounts along with prejudgment interest. Claimants also requested attorneys fees, costs, and punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that an award for costs be assessed against Claimants.

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 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondent, Prudential, is found liable and shall pay to the Claimants the amount of \$400,918.00 which includes prejudgment interest.
- (2) Respondent is also found liable and shall pay to the Claimants the further amount of \$18,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes.
- (3) Respondent is also found liable and shall pay to the Claimants the further amount of \$2,000.00 for costs.
- (4) Claimants' request for punitive damages is denied.
- (5) Respondent's request for costs is denied.
- (6) All other claims are hereby dismissed.

OTHER COSTS

Other than as provided above, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

- (1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,800.00 (one (1) pre-hearing conference x \$300.00 plus six (6) sessions x \$750.00).
- (2) Respondent is hereby assessed \$4,800.00, \$650.00 of which shall be paid directly to the Claimants, and \$4,150.00 of which shall be paid to the National Association of Securities Dealers, Inc.
- (3) The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.
- (4) Respondent shall reimburse the Claimants \$200.00 for the non-refundable filing fee.
- (5) The NASD shall retain the session deposit of \$650.00 paid by the Claimants.

(6) The NASD shall retain the \$200.00 Section 45 Surcharge paid by Respondent.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John P. Cullem, Esq.

Public/Chairperson

/s/

James B. Williams

Public Arbitrator

/s/

Gene G. Stern

Industry Arbitrator

Date of Decision: November 6, 1995