

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

LaVon F. Bond

and

95-01488

Names of Respondents

Prudential Securities, Inc., Larry E. Kerr and Carl Busch

REPRESENTATION OF PARTIES

LaVon F. Bond ("Claimant") was represented by Randall K. Calvert, Esq., Sole Practitioner, located in Oklahoma City, OK.

Prudential Securities, Inc., Larry E. Kerr and Carl Busch ("Respondent") was represented by Donald R. Littlefield, Esq. of Prudential Securities, Inc. located in Dallas, TX.

CASE INFORMATION

The Statement of Claim was filed on or about March 22, 1995.

The Submission Agreement of Claimant, LaVon F. Bond was signed on March 22, 1995.

A Joint Statement of Answer was filed by all Respondents on or about May 26, 1995.

The Submission Agreement of Respondent, Prudential Securities, Inc. was signed on May 16, 1995 by Donald R. Littlefield, Vice President.

The Submission Agreement of Respondent, Larry E. Kerr was signed on June 16, 1995.

The Submission Agreement of Respondent, Carl Busch was signed on May 16, 1995.

HEARING INFORMATION

The hearing was held in Oklahoma City on the following dates:

- April 2, 1996 for three (3) sessions
- April 3, 1996 for two (2) sessions

CASE SUMMARY

In the Statement of Claim, LaVon Bond ("Bond") alleged that she opened an account with Prudential Securities, Inc. by and through its representative, Larry E. Kerr ("Kerr"), in 1987 based on the advice of her husband. Claimant alleged that she had not had an investment account at a brokerage firm prior to that time. Before 1989 and consistent with her investment objectives, Bond bought and held only three stocks experiencing modest growth primarily from interest income. Upon the death of her husband in 1989, the Claimant received approximately \$400,00.00 in life insurance proceeds which constituted virtually all of her life savings. The Claimant allegedly invested the proceeds of her husband's estate in insured certificates of deposit. According to the Claimant, although Kerr knew that the insurance proceeds represented her retirement fund and that she consistently withdrew from her account \$2,000.00 to \$5,000.00 a month for living expenses, Kerr advised Bond to redeem all of her certificates of deposit and to invest solely in the stock market. The Claimant alleged that after initially gaining her trust by purchasing a variety of good quality stocks, Kerr seduced her into purchasing a number of stocks which were unsuitable for her since at the time of purchase, many of the stocks had a safety rating of below average or worse by Value Line and almost half of the stocks selected by Kerr were not tracked by Value Line. Bond claimed that Kerr churned her account since the turnover rate for her account in 1992 was nearly five and for the years of 1993 and 1994, the rate was more than six. Bond further claimed that Kerr arranged for Prudential to extend to her margin credit in excess of \$200,000.00 without her written authority and without providing her with required disclosures. Bond contended that on December 10, 1991 and on February 16, 1993, Kerr effected short sales without Bond's knowledge or consent and without explaining the risks of such transactions. According to the Claimant, Kerr also invested unreasonably large amounts of the account in the common stock of Conner Peripherals and Jackpot Enterprises. Bond alleged that three of the common stocks purchases for her account by Kerr, namely, Symantex Corporation, Triton Energy and Comptronix Corporation, not only had negative press reports prior to the purchase dates but were also later subjects of class action lawsuits. The Claimant made other specific allegations against Kerr including, but not limited to, violations of Section 10b-5 and 10b-16 of the Securities Act of 1934, violations of Section 15 of the Securities Act of 1933, violations of Section 408(a)(2) of the Oklahoma Securities Act, negligence, breach of fiduciary duty, fraud and misrepresentation. Bond alleged that Respondents, Prudential and Carl Busch, Branch Manager, failed to supervise Kerr' trading activity which constituted a reckless disregard for the safety of the account and were liable for Kerr's unlawful acts under state and federal law.

In their Answer, Prudential Securities, Inc., Larry E. Kerr and Carl Busch denied the allegations of wrongdoing set forth in the Statement of Claim. Respondents specifically stated that Claimant had a non-discretionary account, Claimant was in control of her account and most of the trades were the result of her independent research. The Respondents asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim for which relief may be granted;
2. Claimant's transactions were appropriately entered and confirmed in accordance with industry, legal and regulatory requirements;
3. All or part of Claimant's damages were barred by applicable statutes of limitations;
4. Claimant was barred from recovery because she authorized, approved of and/or ratified all transactions of which she complained;
5. Claimant was barred from recovery because she failed to timely complain;
6. Claimant was barred from recovery by the doctrines of laches, waiver and estoppel;
7. Any losses allegedly sustained by Claimant were caused by her own decisions to buy, hold or sell the securities of which she complained;
8. Any losses allegedly sustained by Claimant were caused by her failure to mitigate her losses;
9. Any losses allegedly sustained by Claimant were caused by the sole actions and/or negligence of Claimant;
10. Claimant assumed the risks of investing in the securities of which she complained;
11. Any injury or loss to Claimant was the result of superseding or intervening causes beyond the control of Respondents;
12. There was no breach of any duty by Respondents;
13. Respondents did not make any misrepresentations to Claimant or omit to state any material facts;
14. Prudential or Busch did not fail to supervise and acted in good faith in reliance on Claimant's representation; and
15. Claimant was not entitled to attorney's fees or punitive damages under the laws and/or facts of the case.

RELIEF REQUESTED

Claimant, LaVon F. Bond requested an award in the amount of \$250,000.00 in actual damages, a judgement expunging any margin debt and sanctions against Respondents, Larry R. Kerr and Carl Busch. The Claimant also requested punitive damages in an amount to be determined by the panel, costs, expenses, attorneys' fees and interest.

Respondents, Prudential Securities, Inc., Larry E. Kerr and Carl W. Busch requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

At the start of the hearing, the Respondent submitted a motion to exclude evidence to be presented by the Claimant in accordance with Section 32(c) of the NASD Code of Arbitration Procedure (the "Code"). After reviewing the motion and following the oral arguments of the parties, the arbitrators determined that the motion was denied.

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. Respondent, Prudential Securities, Inc. is hereby liable for and shall pay to the Claimant, LaVon F. Bond the sum of \$92,633.76 in actual damages;
2. All relief not specifically granted herein is hereby denied in its entirety; and
3. The parties shall bear their own costs of arbitration including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were five (5) sessions x \$750.00 = \$3,750.00 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 Code, 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, LaVon F. Bond. Respondent, Prudential Securities, Inc. is hereby liable for and shall pay to the Claimant, LaVon F. Bond the sum of \$950.00 as reimbursement. Respondent, Prudential Securities, Inc. is hereby liable for and shall pay to the NASD the amount of \$3,000.00 in additional forum fees.

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

Signatures:

Dated:

Frank A. Molenda, Esq.
Frank A. Molenda, Esq.
Public Arbitrator, Presiding Chair

May 1, 1996

Edwin E. O'Brien
Edwin E. O'Brien
Public Arbitrator

April 24, 1996

Carolyn Anne Messler
Carolyn Anne Messler
Industry Arbitrator

April 23, 1996

Date served by the NASD: May 1, 1996