

AWARD

NASD Regulation, Inc. Dispute Resolution

In the Matter of the Arbitration Between

James M. Evans, and Shirley D. Evans,

Claimants,

v.

No. 95-02049

Prudential Securities, Inc., PaineWebber, Inc.,
Daniel L. Zessinger, and Sandra M. Logay,

Respondents.

REPRESENTATION OF PARTIES

Claimants James M. Evans and Shirley D. Evans were represented by Edward C. Cody, Esquire of Klutho, Cody & Kilo, P.C.

Respondents Prudential Securities, Inc. and Sandra M. Logay were represented by H. Todd Iveson of Dankenbring, Greiman, Osterholt & Hoffman located in St. Louis, Missouri.

Respondent PaineWebber, Inc. was represented by Matthew V. Bartle of Bryan Cave LLP located in Kansas City, Missouri.

Respondent Daniel L. Zessinger was not represented and did not appear at the hearing.

CASE INFORMATION

Claimants James M. Evans and Shirley D. Evans' Statement of Claim was filed on or about April 27, 1995. Claimants' Submission Agreement was signed on or about April 27, 1995.

A Statement of Answer was filed by Respondent PaineWebber on or about August 10, 1995. PaineWebber's Submission Agreement was signed on August 14, 1995.

A Statement of Answer was filed by Respondents Prudential Securities, Inc. and Sandra M. Logay on or about June 18, 1995. Respondents Prudential Securities, Inc.'s and Sandra M. Logay's Submission Agreements were signed on or about June 14, 1995.

HEARING INFORMATION

A pre-hearing conference was held on June 5, 1996 for one (1) session.

The hearing was held on: July 23, 1996 for two (2) sessions;

July 24, 1996 for two (2) sessions; and
July 25, 1996 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

CASE SUMMARY

Claimants James M. Evans and Shirley D. Evans ("Claimants") alleged that Respondent Daniel L. Zessinger, while working for Respondent PaineWebber, Inc. and for Respondent Prudential Securities, Inc. under the supervision of Respondent Sandra M. Logay, wilfully defrauded them, wilfully made misrepresentations, and wilfully omitted material facts. Claimants declared that they were unsophisticated investors without knowledge as to stock investments. Claimants asserted that Respondent Daniel L. Zessinger defrauded them by representing that he was selling them investment interests and then using the funds to pay off his debts or obligations and other investment returns promised to other investors; made untrue statements in telling them that their account had a certain value when the net account value was less than the stated value; made untrue statements in telling them that they had investments in a special account which explained the discrepancies between the value of the account as stated by him and the monthly statements; omitted to disclose to them the net account value of their account; omitted to disclose to them that the funds being distributed to them were not coming from income being generated in their account, but rather from selling off investments held in their account; purchased and sold securities in their account without consulting them and without obtaining their authorization; made unsuitable purchases and sales of securities on their account; churned their account for the purpose of generating commissions; and opened a margin account for them without their written authorization and engaged in margin trades without explanation to them of what a margin account was at the time it was opened and without informing them that trades were being made on margin. Claimants further asserted that Respondents Prudential Securities, Inc., PaineWebber, Inc., and Sandra M. Logay were careless and negligent in failing to properly instruct and supervise Respondent Daniel L. Zessinger, that Respondents Prudential Securities, Inc. and PaineWebber, Inc. were careless and negligent in hiring Respondent Daniel L. Zessinger, and that Respondents Prudential Securities, Inc., PaineWebber, Inc., Daniel L. Zessinger, and Sandra M. Logay breached their fiduciary duties to Claimants. Claimants also alleged that either Respondent PaineWebber, Inc. or Prudential Securities, Inc. misplaced or lost \$102,000 in Lewisville Texas Bonds. Claimants alleged that as a result of the conduct, activities, and acts of commission and omission by Respondents Prudential Securities, Inc., PaineWebber, Inc., Daniel L. Zessinger, and Sandra M. Logay, they have suffered actual damages of \$300,000.

Respondents Prudential Securities, Inc. and Sandra M. Logay denied being liable to Claimants for damages in any matter. Respondents Prudential Securities, Inc. and Sandra M. Logay stated that Claimants received monthly statements and confirmations and did not once complain about or object to any trades on their account. Respondents Prudential Securities, Inc. and Sandra M. Logay made the following affirmative defenses: (1) Claimants fail to state a claim upon which relief may be granted; (2) Claimants' claims are barred by applicable statutes of limitations; (3) Claimants are barred from recovery under the doctrines of waiver, estoppel, ratification and laches; (4) Claimants have failed to mitigate their damages; and (5) Claimants' claims for punitive damages and attorneys' fees are not available under governing law.

Respondent Daniel L. Zessinger did not file a Statement of Answer with the NASD Regulation, Inc. Dispute Resolution.

RELIEF REQUESTED

Claimants James M. Evans and Shirley D. Evans requested: an award in the amount of \$300,000 for compensatory damages; an award in the amount of \$600,000 for punitive damages; an award of pre-judgment and post-judgment interest; and an award of attorneys' fees and costs.

Respondent PaineWebber, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its costs.

Respondents Prudential Securities, Inc. and Sandra M. Logay requested that the claims asserted against them be denied.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of Claimants James M. Evans and Shirley D. Evans, the undersigned arbitrators have determined that Respondent Daniel L. Zessinger has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Daniel L. Zessinger had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent PaineWebber did not participate in the hearing of this matter. The Claimants and PaineWebber settled their dispute prior to the first hearing.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondents Prudential Securities, Inc., Sandra Logay, and Daniel L. Zessinger are jointly and severally liable for, and shall pay to the Claimants the sum of \$78,188.00 as satisfaction of their claim for economic loss.

Respondents Prudential Securities, Inc., Sandra Logay, and Daniel L. Zessinger are jointly and severally liable for, and shall pay to the Claimants the sum of \$81,400.00 as partial satisfaction of Claimants' claims for punitive damages.

Respondent Daniel L. Zessinger is liable for, and shall pay to Claimants the sum of \$250,000.00 as partial satisfaction of their claim for punitive damages.

Respondent Prudential Securities, Inc. is liable for and shall pay to Claimants the sum of \$1,250.00 as satisfaction of Claimants' claim for costs.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) regular sessions x \$1,000 and one (1) pre-hearing conference session x \$300 = \$6,300 in forum fees. Pursuant to §10332(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 §10332(c) of the Code, NASD Regulation, Inc. Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Dispute Resolution by the Claimants.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500 previously paid by PaineWebber, Inc.

Pursuant to §10333 of the Code, Prudential Securities, Inc. is liable for the nonrefundable member surcharge in the amount of \$500.

Additional forum fees in the amount of \$5,300 are assessed against Prudential Securities, Inc.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Jerry M. Drewry
Jerry M. Drewry
Public Arbitrator, Presiding Chair

September 11, 1996

/s/ Warren E. Van Norman
Warren E. Van Norman
Public Arbitrator

September 6, 1996

/s/ Stephen G. Sneeringer
Stephen G. Sneeringer
Industry Arbitrator

September 5, 1996