

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Stanley and Leonora J. Thayer,

Claimants,

and

No. 96-00763

Michael Lee Cooperstock,
T.I. Investments, Inc., and
Prudential Bache Securities,

Respondents.

REPRESENTATION OF PARTIES

Claimants Stanley and Leonora J. Thayer ("Claimants") were represented by Anthony V. Trogan, Jr., Esq. of Weisman, Trogan, Young & Schloss located in Bingham Farms, Michigan.

Respondent Prudential Bache Securities n/k/a Prudential Securities, Inc. ("PSI") was represented by Jack J. Mazzara, Esq. of Hertz, Schram & Saretsky, P.C. located in Bloomfield Hills, Michigan.

Respondent T.I. Investments, Inc. ("T.I. Investments") was represented by Robert H. Fortunate, Esq. of Foster, Meadows, Ballard, P.C. located in Detroit, Michigan.

As further discussed in *Other Issues Considered and Decided*, Respondent Michael Lee Cooperstock ("Cooperstock") filed for protection under the Bankruptcy Code.

CASE INFORMATION

The Statement of Claim was filed on or about February 19, 1996.

Claimants' Joint Submission Agreement was signed on February 15, 1996.

Respondent PSI's Statement of Answer was filed on or about March 29, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondent PSI filed a

properly executed submission agreement.

Respondent T.I. Investment's Statement of Answer was filed on or about March 22, 1996.

Respondent T.I. Investment's Motion to Dismiss was filed on or about August 5, 1996.

Respondent T.I. Investment's Submission Agreement was signed on March 22, 1996 by Thomas E. Welch, President of T.I. Investments, Inc.

HEARING INFORMATION

A telephonic pre-hearing conference was held on October 21, 1996 for one (1) session.

The hearing was held on: February 24, 1997 for two (2) sessions; February 25, 1997 for two (2) sessions; and July 23, 1997 for two (2) sessions.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Respondent Cooperstock was a salesperson employed by Respondents PSI and T.I. Investments. Claimants contended that when they began their relationship with Respondents they disclosed all pertinent facts concerning their status including: age, employment, assets, finances and legitimate investment objectives. Claimants asserted that Respondents recommended and sold to Claimants investments in Lease Equities Fund, Inc. ("Lease Equities"), investments which were: (1) unregistered, non-exempt securities; (2) not suitable for Claimants given their status and investment objectives; and (3) sold without proper risk disclosure and without proper disclosure of the character of the investments themselves. Based upon these allegations, Claimants asserted the following claims, including: breach of contract; common law fraud; conspiracy; promissory estoppel; conversion; negligence; malpractice; breach of fiduciary duty; breach of federal securities law; breach of Michigan securities law; violation of Michigan Consumer's Protection Law; churning; and RICO violations.

Respondent PSI denied all liability to Claimants in its Statement of Answer. Respondent PSI alleged that Claimants were the customers of Respondents T.I. Investments and Cooperstock. Respondent PSI asserted that PSI merely served as a clearing broker for T.I. Investments. Respondent PSI contended that it performed mechanical functions related to clearing trades and did not deal directly with T.I. Investments customers, including Claimants, regarding their investments.

Respondent PSI asserted that it had no responsibility to monitor the investments that Claimants made or the handling of their accounts because that responsibility belonged to T.I. Investments and Cooperstock. Accordingly, Respondent PSI asserted the following defenses, including: (1) as clearing broker, PSI had no direct or secondary liability for the acts or omissions of T.I. Investments or its employee Cooperstock; (2) the Statement of Claim does not set forth sufficient allegations to establish a claim of fraud or misrepresentation against PSI; (3) there are no allegations in the Statement of Claim that could give support to a churning claim; (4) the Statement of Claim does not allege the basis for a RICO claim; (5) Claimants' claims are barred by the statute of limitations for federal securities claims; and (6) Claimants are not entitled to recover punitive or exemplary damages or attorney fees under the law.

Respondent T.I. Investments also denied all liability to Claimants in its Statement of Answer. Respondent T.I. Investments alleged that it was not responsible for the activities of Respondent Cooperstock. Respondent T.I. Investments contended that no one at T.I. Investments knew anything of Cooperstock's private activities with Lease Equities. Respondent T.I. Investments asserted that it did not have any selling agreement with Lease Equities and consequently, Respondent Cooperstock was prohibited by T.I. Investments and the rules of the NASD from engaging in the transactions complained of.

RELIEF REQUESTED

Claimants requested an award for actual damages of \$265,000 as out-of pocket loss, plus interest at 12%, costs, attorney fees, and punitive and exemplary damages.

Respondents PSI and T.I. Investments requested that the claims asserted against them be denied in their entirety and that they be awarded costs and attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the Notice filed in the United States Bankruptcy Court by Respondent Cooperstock under the Bankruptcy Code, all matters concerning Respondent Cooperstock were indefinitely stayed. Accordingly, this matter proceeded only with respect to the Claimants and remaining Respondents.

Respondent PSI did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure ("Code") and having answered the claim, appeared and

testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

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:

Claimants are sophisticated persons with education, backgrounds and investment experience which enabled each of them to understand and evaluate securities investments and relationships. Michael L. Cooperstock during the period and in connection with the events under review acted in a devious and secretive manner, and maintained a relationship with Claimants for his personal benefit and without regard to his responsibilities to Claimants or the other Respondents. At all times, Cooperstock hid this relationship from Respondents.

Cooperstock's relationship with Claimants began years before he associated with Respondent T.I. Investments. Thomas Welch testified credibly that, prior to accepting Cooperstock as an affiliated representative, he explained to him the narrow focus of the business of Respondent T.I. Investments and attempted to review all of Cooperstock's files. Cooperstock did not disclose the existence of Claimants' Lease Equities investment to Welch at their initial meeting or at any time thereafter until Lease Equities collapsed. Cooperstock was engaged in a scheme of "selling away" to Claimants during the entire term of his association with Respondent T.I. Investments. Welch testified credibly that during the time Cooperstock was associated with Respondent T.I. Investments, he made available to Cooperstock written materials which clearly stated that "selling away" was prohibited, and personally told Cooperstock that he was to sell only investment products approved by Respondent T.I. Investments and to sell them only through Respondent T.I. Investments. Cooperstock's testimony to the contrary is not credible. Further, a person of Cooperstock's experience in the securities industry would have known or should have known that "selling away" is prohibited.

There is no credible evidence that Respondent T.I. Investments could have taken any reasonably available action that would have resulted in discovering Cooperstock was

"selling away." There is no credible evidence to support a conclusion that Claimants were entitled to conclude Respondent Prudential Bache Securities n/k/a Prudential Securities, Inc. was connected with the Lease Equities transactions in any way whatsoever.

Accordingly, it is the decision of this panel that the Statement of Claim is hereby dismissed in its entirety with prejudice and that other than forum fees, which are addressed below, all other claims and requests for relief are also hereby dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. There were six (6) hearing sessions x \$750 = \$4,500 in forum fees. Total forum fees = \$4,800. 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. Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$200 and shall **retain** as forum fees the hearing session deposit of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants. Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent T.I. Investments.

Pursuant to § 10332(c) of the Code, Claimants are liable for and shall pay forum fees in the amount of \$850 (1/3 forum fees - hearing session deposit).

Pursuant to § 10332(c) of the Code, Respondent PSI is liable for and shall pay forum fees in the amount of \$1,600 (1/3 forum fees).

Pursuant to § 10333 of the Code, Respondent PSI is liable for and shall pay its member surcharge of \$350.

Pursuant to §§ 10319(b) and 10332(c) of the Code, Respondent PSI is liable for and shall pay postponement fees of \$750.

Pursuant to § 10332(c) of the Code, Respondent T.I. Investments is liable for and shall pay

forum fees in the amount of \$1,600 (1/3 forum fees).

Pursuant to §§ 10319(b) and 10332(c) of the Code, Respondent T.I. Investments is liable for and shall pay postponement fees of \$750.

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

Concurring Arbitrators' Signatures

\s\ John F. Burns, Esq.
John F. Burns, Esq.
Chairperson
Public Arbitrator

August 15, 1997
Dated:

\s\ Stephen K. Woods, Esq.
Stephen K. Woods, Esq.
Panelist
Public Arbitrator

August 12, 1997
Dated:

\s\ Brace K. Case, Esq.
Brace K. Case, Esq.
Panelist
Industry Arbitrator

August 15, 1997
Dated:

For NASD use only:

Date Award was served on the parties: August 19, 1997