

NASD REGULATION, INC. AWARD

NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimants

Steven and Alexandra Shiekman

96-01038

Name of Respondents

Prudential Securities, Inc.  
Lehman Brothers, Inc.  
William J. Beaton, III

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**REPRESENTATION**

For Claimants Steven and Alexandra Shiekman ("Claimants"): Scott L. Warfman, Esq. of Warfman and Bloom, P.A., Miami, Florida.

For Respondent Prudential Securities, Inc. ("Prudential"): Mark J. Happe, Esq., in-house counsel with Prudential, New York, New York.

For Respondent Lehman Brothers, Inc. ("Lehman"): Steven P. Vincent, Esq., in-house counsel with Lehman, New York, New York.

Respondent William J. Beaton, III ("Beaton") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: March 8, 1996. Claimants' Submission Agreement signed on: February 29, 1996.

Statement of Answer filed by Respondent Prudential on: June 13, 1996. Respondent Prudential's Submission Agreement signed on: June 13, 1996 by Robert Saperstein on behalf of Prudential.

Statement of Answer filed by Respondent Lehman on: August 7, 1996. Respondent Lehman failed to sign a Submission Agreement as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure ("the Code").

Statement of Answer filed by Respondent Beaton on: July 2, 1996. Respondent Beaton's Submission Agreement signed on: June 27, 1996.

### **HEARING INFORMATION**

On November 14, 1996 a telephonic prehearing conference was conducted with the full panel. On April 7, 1997 a telephonic prehearing conference was conducted with a single arbitrator.

On April 23 and 24, 1997 hearings lasting four sessions were conducted in Ft. Lauderdale, Florida.

### **CASE SUMMARY**

Claimants alleged that Respondents were liable for common law fraud, federal securities fraud, breach of fiduciary duty, unsuitability and negligence. Claimants further alleged that Respondents Prudential and Lehman were also liable for failure to reasonably supervise Beaton under the controlling person liability provisions found in Section 20(a) of the Securities Exchange Act of 1934. Claimants alleged that they sought safe, conservative investments but that Respondent Beaton, through misrepresentations, solicited Claimants to purchase common stock that was speculative and risky. Claimants maintained that Beaton induced Claimants to invest almost their entire liquid net worth into said stock through various misrepresentations and omissions and that said purchases resulted in an overconcentration of the stock in Claimants' account.

Respondents Prudential and Beaton denied all allegations of wrongdoing and alleged that the purchases of the stock at issue were suitable for Claimants, no misrepresentations were made to Claimants and that Prudential properly supervised Beaton at all times. Respondent Prudential also asserted various affirmative defenses including that Claimants had full knowledge of the transactions complained of, any losses were due to market conditions, ratification, waiver, estoppel, contributory negligence, laches, statute of limitations, failure to exercise due diligence, good faith, the Economic Loss Rule, failure to state a claim, and there is no cause of action for alleged violations of the Rule of Fair Practice.

Respondent Lehman denied all allegations of wrongdoing and alleged that the Claimants purchased the stock at Lehman after extensive discussions with Beaton, the purchase was made at Claimants' direction, the account was profitable while at Lehman, and all purchases of the stock were consistent with Claimants' investment objectives. Lehman also asserted various affirmative defenses including failure to state a claim, Claimants had full knowledge of all material facts concerning the transactions as well as the associated risks, Claimants authorized the transactions, waiver, estoppel, ratification, assumption of risk, any losses were due to market conditions, statute of limitations, comparative fault, failure to mitigate damages, laches, and any alleged misrepresentations were expressions of opinion and are not actionable.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$138,559.00 plus interest, costs, attorney's fees, and punitive damages.

Respondents Prudential and Beaton requested dismissal of the claim plus costs.

Respondent Lehman requested dismissal of the claim plus costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the final hearing of this matter the arbitration panel was informed that the Claimants had entered into a settlement agreement with Respondent Lehman. Therefore, Respondent Lehman was dismissed, with prejudice, and the panel has made no determinations with respect to Lehman.

At the commencement of the hearing on April 23, 1997, Claimants advised the panel that they were dismissing Respondent Beaton with prejudice. Respondent Prudential requested leave to file a third-party claim against Respondent Beaton which the panel denied, without prejudice to Prudential filing a separate action against Beaton. Therefore, Respondent Beaton was dismissed from this proceeding and the panel has made no determinations with respect to Beaton.

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.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned 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 Claimants the amount of \$21,658.00.
2. Claimant's requests for interest, punitive damages, costs and attorney's fees are denied.
3. Respondent Prudential's request for costs is denied.
4. Respondent Prudential is found liable and shall pay to Claimants the further amount of \$750.00 as a reimbursement of the hearing session deposit previously paid by Claimants to NASD Regulation, Inc.

**FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,050.00 (one pre-hearing conference with the full panel x \$750.00 plus one pre-hearing conference with a single arbitrator x \$300.00 plus 4 sessions x \$750.00 per session).

1. Respondent Prudential is hereby assessed \$4,050.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the amount of \$3,300.00.
2. NASD Regulation, Inc. shall retain the \$200.00 claim filing fee previously paid by Claimants.
3. NASD Regulation, Inc. shall retain the \$350.00 member surcharge previously paid by Respondent Prudential.
4. Respondent Lehman is hereby assessed the \$350.00 member surcharge pursuant to Rule 10333 of the Code.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Michael Lukasievich, Esq.

Public/Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Lionel P. Greenbaum

Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Murray Rosenberg

Public

Date of Decision: May 20, 1997