

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

The Seibels Bruce Group, Inc.

NASD CASE NO. 96-03021

Names of Respondents

**Prudential Securities Incorporated
and William B. Danzell**

REPRESENTATION

For Claimant: Joseph R. Manning, Esq. of Morris, Manning & Martin, Atlanta, Georgia and Stephen E. Carter, Esq. of Bethea, Jordan & Griffin, P.A., Hilton Head Island, South Carolina.

For Respondent Prudential Securities Incorporated ("PSI"): Stephen L. Ratner, Esq. and Caroline Hall, Esq. of Rosenman & Colin LLP, New York, New York.

For Respondent William B. Danzell ("Danzell"): Brian N. Smiley, Esq. and J. Michael Bishop, Esq. of Page & Bacek LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on July 15, 1996. Claimant's Submission Agreement signed on July 12, 1996 by Kenneth W. Pavia, Director of The Seibels Bruce Group, Inc. ("Seibels Bruce"). Amended Statement of Claim filed on August 9, 1996.

Statement of Answer / Answer to the Amended Statement of Claim and Cross-Claim filed by Respondent PSI on November 12, 1996. Respondent PSI's Submission Agreement signed on November 11, 1996 by Robert A. Saperstein, Vice President and Associate General Counsel of Prudential Securities Incorporated.

Answer and Counterclaim to Amended Statement of Claim and Cross-Claim Against Prudential Securities Incorporated filed by Respondent Danzell on November 12, 1996. Respondent Danzell's Submission Agreement signed on October 16, 1996.

Respondent Danzell's Answer and Reply to PSI's cross-claim filed on November 20, 1996.

Respondent PSI's Reply to Crossclaim of Respondent William B. Danzell filed on November 22, 1996.

Claimant's Answer to Respondent Danzell's Answer and Counterclaim to Amended Statement of Claim and Cross-Claim Against PSI filed on December 26, 1996.

Second Amended Statement of Claim filed by Claimant on July 16, 1998.

Counterclaim filed by Respondent PSI on July 16, 1998.

Respondent Danzell's Statement of Answer to Second Amended Statement of Claim filed on July 30, 1998.

Respondent PSI's Answer to the Second Amended Statement of Claim filed on July 31, 1998.

Claimant's Answers to Respondent PSI's Counterclaim and Respondent Danzell's Counterclaim filed on September 8, 1998.

Third Amended Statement of Claim filed by Claimant on September 11, 1998. Responses to Claimant's Third Amended Statement of Claim filed by PSI and Danzell on September 23, 1998.

HEARING INFORMATION

On March 13, 1998 and October 7, 1998, telephonic pre-hearing conferences lasting one session each were conducted with the arbitration panel (the "Panel"). On October 12, 13 and 14, 1998, in Charlotte, North Carolina, hearings lasting six sessions were conducted with the Panel.

CASE SUMMARY

Claimant Seibels Bruce Group, Inc. ("Seibels Bruce") commenced this arbitration against Respondent Prudential Securities Incorporated ("PSI") and William B. Danzell ("Danzell") in 1996. In its original Statement of Claim, Seibels Bruce asserted it was an insurance company which had previously been a client of PSI and its registered representative, Danzell. Claimant contended that the Respondents had defrauded it with regard to certain insurance reserves which were invested at PSI, charged "secret" markups and commissions, churned the various accounts which they held at PSI, conspired to benefit others at the expense of Seibels Bruce, violated state and federal securities laws, breached their fiduciary duty, breached their contract, and acted negligently in dealing with Seibels Bruce's invested assets. Seibels Bruce contended that as a result of this alleged misconduct they had sustained losses exceeding \$5 million for which it sought recovery. In its Amended Statement of Claim, Seibels Bruce attempted to bring claims against Albert H. Cox, who was previously employed by Seibels Bruce as an independent consultant. As Mr. Cox was not a registered person, the claims against him were voluntarily dismissed for lack of jurisdiction. Seibels Bruce subsequently filed its Second Amended Statement of Claim against PSI and Danzell and thereafter, following discovery, filed its Third Amended Statement of Claim in which Claimant voluntarily dismissed a number of its allegations of fraud and malfeasance, limiting its theories upon which recovery was sought to claims of breach of contract, negligence and breach of fiduciary duty.

In his Statement of Answer, Respondent Danzell denied any liability, contending that Seibels Bruce was a sophisticated institutional investor that lost money in its non-discretionary wrap fee account solely as a result of its business decision to enhance the investment income from its

portfolio by extending the maturity of various debt obligations, including primarily government bonds secured by the full faith and credit of the United States. Danzell further contended that each and every investment in the portfolio was made in consultation with the designated officers of Seibels Bruce and that such investment decisions were subsequently formally ratified by the Board of Directors of Seibels Bruce. Danzell contended that it was only as a result of the unanticipated business decision of Seibels Bruce to liquidate certain bonds during a temporary downturn in the government bond market in 1994 that Seibels Bruce sustained any losses at all in its portfolio. Danzell asserted that had Seibels Bruce held its positions until the bond market recovered it would have suffered no loss and, in fact, would have enjoyed significant gains. In addition to denying liability to Claimant and to PSI, Danzell asserted a cross-claim against PSI for contribution and/or indemnification, and counterclaimed for his attorneys' fees and expenses of litigation because the claim against him was brought in bad faith, without a reasonable basis in law or in fact.

In its Statement of Answer, Respondent PSI denied any liability, contending that Seibels Bruce was a sophisticated institutional investor that entered into a non-discretionary, wrap fee agreement with PSI. Under the terms of the wrap fee account agreement, all trades executed in the Seibels Bruce account received prior approval of Seibels Bruce's CFO Terry Fields or its then CEO Sterling Beale and ratification of the trades by the board of directors. PSI further contended that Seibels Bruce made a business decision to increase its income by purchasing long-term bonds, many of which were U.S. Government bonds that were backed by the full faith and credit of the United States. Due to an unexpected rise in the interest rates in 1994 and the unforeseen decision by Seibels Bruce to liquidate a substantial portion of its bond portfolio in order to use the proceeds for other business purposes, Seibels Bruce realized losses in its wrap fee account. PSI asserted that Seibels Bruce would not have suffered any losses had it held its bond positions as it had previously indicated that it intended to do. In addition to denying liability to Claimant and to Danzell, PSI asserted a cross-claim against Danzell for contribution and/or indemnification, and counterclaimed for attorney's fees and expenses of litigation because the claims against it were brought in bad faith, without a reasonable basis in law or in fact.

RELIEF REQUESTED

Claimant requested rescission and restitution of all losses; compensatory damages in an amount exceeding Five Million (\$5,000,000.00) Dollars; punitive damages; attorneys' fees; and, such other just and equitable relief as the Panel deemed to be necessary and proper. Claimant further requested that the counterclaims by PSI and Danzell be dismissed.

Respondent PSI requested that Claimant's claims be dismissed in their entirety or, in the alternative, an award on its cross-claim against Danzell for indemnification and/or contribution. PSI further requested an award on its counterclaim against Claimant of PSI's attorneys' fees, costs and disbursements incurred in this matter, and that Danzell's cross-claim be dismissed.

Respondent Danzell requested that Claimant's claims be dismissed in their entirety or, in the alternative, an award on its cross-claim against PSI for indemnification and/or contribution. Danzell further requested an award on its counterclaim against Claimant of all of his legal fees, costs and expenses incurred in the defense of this matter, and that PSI's cross-claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with NASD Regulation, Inc.

At the conclusion of the Claimant's presentation of its case during the evidentiary hearing, and following the testimony of Terry Fields, the former Chief Financial Officer of Seibels Bruce who testified on behalf of Respondents, Respondents moved for dismissal of the claim, contending that Claimant had not produced any evidence of any violation of any right, duty or contractual obligation owed by Respondents to Claimant. After giving the parties the opportunity to argue the point, the Panel went into executive session, following which it announced its decision dismissing the claim in its entirety. The Panel advised the parties that it would hear evidence commencing on the morning of October 14, 1998 and accept briefs concerning the Respondents' counterclaims that they were entitled to sanctions and attorneys' fees from the Claimant.

Prior to the commencement of the hearing sessions on October 14, 1998, the parties announced that they had reached an agreement resolving the counterclaims (the "Agreement") in a manner which they wished to be incorporated into the Award of the Panel. The Panel agreed to enter as its Award the Agreement of the parties. The terms of the Agreement (the full text of which is incorporated by reference herein) are summarized below (see "Award").

AWARD

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

- 1) As announced by the Panel on October 13, 1998, following the presentation of Claimant's evidence, all claims of Claimant are dismissed in their entirety.
- 2) PSI and Danzell dismissed all of their counterclaims with prejudice and released Seibels Bruce and all of its agents from any and all claims arising out of the transactions giving rise to this arbitration, as well as those claims which could arise out of this arbitration.
- 3) Seibels Bruce released PSI and Danzell and their agents from any and all claims arising out of the transactions giving rise to this arbitration, as well as all claims which could arise out of this arbitration.
- 4) Counsel for Seibels Bruce agreed to provide a letter in an agreed upon form to both Danzell and PSI, satisfactory to each of them, exonerating Danzell and PSI.
- 5) Seibels Bruce agreed to pay to PSI and Danzell, jointly, on or before October 26, 1998, the total sum of \$400,000.00, in addition to which Seibels Bruce is to pay all arbitration fees and costs including court reporter fees and forum fees.
- 6) Seibels Bruce agreed to cooperate fully in all actions necessary to achieve the

expungement of all references to the claims asserted in this arbitration which may appear on the CRD or other regulatory filings.

7) As stipulated by the parties, it is the finding of the Panel that the claims brought against Respondents Danzell and PSI were unsupported by any evidence and it is the wish of the Panel that the appropriate regulatory authorities, including NASD Regulation, Inc., take such action as is necessary to expunge all references to the claims made in this arbitration from the CRD system and all regulatory filings relating to William B. Danzell.

8) All other claims for relief, including the Respondents' respective cross-claims, are dismissed in their entirety.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code") and the parties' Agreement, the Panel has assessed forum fees in the amount of \$12,000.00 (6 sessions x \$1,500.00, plus 2 pre-hearing conferences with the Panel x \$1,500.00) against the Claimant, for which NASD Regulation, Inc. shall retain the sum of \$3,000.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$9,000.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the \$300.00 claim filing fee, and Respondents PSI and Danzell have each paid to NASD Regulation, Inc. the \$500.00 counterclaim/cross-claim filing fees.

Pursuant to Rule 10333 of the Code, Respondent PSI has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

 /s/
David Brooks Adcock, Esq.
Chairperson

Public

 /s/
James F. Tucker

Public

 /s/
David S. Saylor

Industry

Date of Decision: January 12, 1999