

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mathew J. Letich and Ruth Witter Successor
Trustee and Attorney in Fact Under Durable
Power of Attorney for the Mathew J. Letich
Family Trust

96-03562

Name of Respondents

Prudential Securities, Inc.
Joyce A. Shera

REPRESENTATION

For Claimants: John P. Graves, Jr., Esq. of the law offices of Graves & Palmer Chartered and
William T. Kirtley, Esq. of William T. Kirtley, P.A., Sarasota, FL.

For Respondents: Frederick S. Schriels, Esq. of Holland & Knight, Tampa, FL.

CASE INFORMATION

Statement of Claim filed: August 19, 1996.

Claimants' Submission Agreement signed by Mathew J. Letich, individually and as Trustee of
the Mathew J. Letich Family Trust and by Ruth Witter, Attorney-in-Fact for Mathew J. Letich
on July 26, 1996.

Durable Power of Attorney executed by Mathew J. Letich on January 6, 1993 appointing Ruth
Witter as his Attorney-in-Fact.

Joint Statement of Answer filed by Respondents on: September 30, 1997.

Respondents Prudential Securities, Inc. ("Prudential") and Joyce A. Shera ("Shera") did not
submit their executed Submission Agreements as required by Rules 10301 and 10314 of the
Code of Arbitration Procedure ("Code").

HEARING INFORMATION

On November 7, 1996 and on January 13, 1997 pre-hearing conferences lasting two (2) sessions were conducted with the full panel. In addition, on March 19, 1997 a pre-hearing conference lasting one (1) session was conducted with the Chairperson.

On March 31 and April 1, 2, and 3, 1997 hearings lasting eight (8) sessions were conducted in Tampa, FL.

CASE SUMMARY

Claimants alleged that the claims in this matter were asserted by Ruth Witter, the daughter of Mathew J. Letich and the successor trustee of the Mathew J. Letich Family Trust. Claimants next asserted that Mrs. Witter also served as the attorney-in-fact for Mathew J. Letich by virtue of a durable power of attorney. The claim set forth allegations of excessive transactional activity and churning in the account that was maintained by the Mathew J. Letich Family Trust with Respondent Prudential. The claim also alleged that the Respondents maintained total dominion over the subject account and, during a 29 month period, engaged in approximately 380 purchase and sale transactions, which activity constituted churning. The claim further alleged that Mathew J. Letich was incapable of acting in a manner which would permit his management and dominion over the account in question and that, during all times material to the claim, Mr. Letich suffered from an advanced state of dementia.

Respondents denied Claimants' allegations and maintained that Mathew Letich was a knowledgeable, experienced investor who wanted to trade actively in the stock market, having done so for over thirty (30) years before moving his accounts to the Venice, FL branch office of Prudential. The Respondents further alleged the following: that the new account records, updated new account forms, and active account reports generated in connection with the Venice accounts confirmed that Mr. Letich's primary investment objectives were speculation and aggressive growth through short-term stock trading; that the monthly account statements and transaction confirmations established that the vast majority of the trades in Mr. Letich's Venice accounts were unsolicited; that Mr. Letich controlled the trading in his accounts, and the activity was not excessive in light of Mr. Letich's stated investment objectives; and, the active account printouts, reports, worksheets, memoranda, and correspondence established that Mr. Letich's accounts were, at all times, adequately supervised. In addition to the foregoing, Respondents asserted that Claimant authorized, and/or ratified all of the trades at issue, and that the Claimants' Florida Securities Law claims are barred by the applicable two-year statute of limitations, that Claimants may not recover attorney's fees and that an award of punitive damages would constitute a violation of Respondents' constitutional due process rights.

RELIEF REQUESTED

Claimants requested compensatory damages representing commission disgorgement in the sum of \$110,981.00, legal interest in the sum of \$29,241.00 and attorneys' fees. Claimants further requested "properly managed account" damages of \$147,034.00 and punitive damages of \$332,943.00.

Respondents requested that the arbitrators deny the Claimants' claims and direct Respondents to a court of competent jurisdiction for an award of attorneys' fees and costs.

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 the NASD.

The claims which are the subject matter of this case were originally initiated by virtue of the filing of a complaint in the Circuit Court for the Twelfth Judicial Circuit in and for Sarasota County, Florida. By virtue of an order of such court, the proceedings were stayed pending the outcome of arbitration before a panel of arbitrators in accordance with the Code of Arbitration Procedure.

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) Respondents Prudential Securities, Inc. and Joyce L. Shera are found not liable and, therefore, all claims against them are hereby dismissed.
- 2) Claimants' requests for legal interest, attorneys' fees, punitive damages and "properly managed account" damages are hereby denied.
- 3) Respondents' request to direct them to a court of competent jurisdiction for an award of attorneys' fees and costs is hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,300.00 (two pre-hearing conferences with the full panel x \$1,000.00 plus one pre-hearing conference with only the Chairperson x \$300.00 plus eight hearing sessions x \$1,000.00).

Claimants are hereby assessed \$5,150.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to National Association of Securities Dealers Regulation, Inc. of \$4,650.00.

Respondents Prudential and Shera are hereby assessed \$5,150.00, jointly and severally, payable to National Association of Securities Dealers Regulation, Inc.

Claimants are hereby assessed a filing fee of \$250.00 for which the NASD shall retain the \$150.00 previously deposited in partial satisfaction thereof leaving a balance due to National Association of Securities Dealers Regulation, Inc. of \$100.00.

The National Association of Securities Dealers Regulation, Inc., shall retain the \$300.00 member surcharge previously deposited by the Respondents.

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

Concurring Arbitrators' Signatures

Public/Industry

/s/

Andrew J. Bolnick

Public

/s/

Robert M. Pizzini

Industry

/s/

Howard J. Adler, Esq.

Public

Date of Decision: May 21, 1997
