

1996 N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Larry, Carole, Rainy, Randy & Wendy Waitz

96-04548

Name of Respondents

Prudential Securities, Inc.
James Fulton

REPRESENTATION

Claimants Larry, Carole, Rainy, Randy & Wendy Waitz (collectively "Claimants") were represented by Thomas J. Schuchert, Esq., Schuchert Humphreys, Pittsburgh, PA.

Respondent Prudential Securities, Inc. ("PSI") was represented by David Glotzer, Esq., Prudential Securities, Inc., New York, NY.

Respondent James Fulton ("Fulton") was represented by Richard Freeman, Jr., Esq., Philadelphia, PA.

CASE INFORMATION

The Statement of Claim was filed October 14, 1996.
Claimants' Uniform Submission Agreement was signed October 3, 1996.

PSI's Statement of Answer was filed January 7, 1997.
PSI's Uniform Submission Agreement was signed December 27, 1996.

Fulton's Statement of Answer was filed January 7, 1997.
Fulton's Uniform Submission Agreement was signed January 17, 1997.

HEARING INFORMATION

Prehearing Dates/Sessions: June 4, 1997/two sessions
June 5, 1997/three sessions

Hearing Dates/Sessions: July 21, 1997/two sessions
July 22, 1997/two sessions
July 23, 1997/two sessions
July 24, 1997/two sessions
September 9, 1997/two sessions
September 10, 1997/two sessions
December 16, 1997/two sessions
December 17, 1997/two sessions
December 18, 1997/two sessions

Hearing Location: Westin William Penn Hotel
Pittsburgh, PA

CASE SUMMARY

Claimants alleged that PSI and Fulton (collectively "Respondents") breached their duties to Claimants by inducing Claimants to authorize unsuitable investments through a series of misrepresentations and omissions of material information. Claimants also alleged that Respondents engaged in excessive trading in Claimants' accounts for the benefit of Respondents and not for the benefit of Claimants.

Claimants alleged that they opened an account for Larry and Carole Waitz with PSI in 1981, as well as accounts for the benefit of their children, Rainy, Randy and Wendy during the 1980s, with Fulton as the account executive for the accounts. Claimants alleged that they are unsophisticated investors with only high school educations and were not in a field in which they were familiar with finance, the financial market, the securities business or any of the risks associated with dealing in securities of any sort. At all times, Claimants asserted that they relied totally and completely upon Respondents and expected that he would manage their accounts with their stated investment goals of growth and safety in mind. Claimants alleged that almost immediately Fulton persuaded Claimants that they should have a margin account which would be risk free and would enable them to trade more flexibly in the market and enhance their financial well-being.

Claimants alleged that following the inheritance of approximately \$100,000.00 in 1989, Respondents persisted in a course of conduct which was detrimental to the preservation of Claimants' assets and contrary to their stated investment objectives of safety of principal and reasonable return. Claimants alleged that besides inducing Claimants to inappropriately open margin accounts, Respondents persuaded Claimants to authorize investments in options and to invest in other speculative securities, including several in which PSI was a market-maker, without explaining the commission basis or the notion of mark up to Claimants. Claimants alleged that Respondents convinced them to authorize transactions in various limited partnerships sponsored by PSI, all of which were speculative, enormously unsuitable and which resulted in a large benefit to Respondents and substantial economic detriment to Claimants.

Claimants alleged that Respondents' activities amounted to a breach of fiduciary duty; breach of principal and agent/breach of agency relationship; respondeat superior; fraud and misrepresentation (including fraud in the inducement and fraud in the coverup), breach of contract; negligence; gross negligence and wanton and wilful misconduct.

Respondent PSI denied allegations of wrong-doing as asserted in the Statement of Claim. PSI maintained that Claimants have received monthly statements and confirmations of all transactions for fourteen (14) years and during those fourteen years have filed tax returns which listed gains and losses. PSI further maintained that on two occasions between 1990 and 1994, PSI contacted Claimants to discuss their accounts but Claimants insisted they were happy with Fulton and understood their account statements. In addition, when Fulton left PSI, Claimants took their account to the new broker-dealer where Fulton was employed, and it was year after that before Claimants raised their first complaint.

PSI asserted the affirmative defenses of acceptance and ratification; investments in accordance with stated investment objectives; claims are prohibited by the applicable statute of limitations; a failure to state a claim upon which relief can be granted; failure to state a claim for punitive damages; a failure to mitigate their damages; and any losses sustained by Claims are attributable to market conditions and to Claimants' own investment decisions.

Respondent Fulton denied that Claimants are unsophisticated investors with little or no education. In fact, Fulton maintained that Claimants are neither ignorant people or inexperienced investors; they are not victims of fraud and they did not lose \$286,000.00 in the six years preceding the filing of this arbitration as claimed. Fulton further maintained that Claimants Larry and Carole Waitz have operated their own business successfully for more than twenty-five years and have had the benefit of an accountant for their business, investment and tax affairs for many years.

Fulton further maintained that he spoke with Claimants regularly about their investment strategy and choices and that Claimants specifically authorized the use of a margin account in Larry and Carole's account (margin was not used in the children's accounts) as well as trading in options, after discussing these approaches with Respondents. Fulton asserted that Claimants received information on the risks as well as benefits of the investment strategy and signed written authorization. Fulton contended that these transactions did not involve uncovered options and were profitable for Claimants. Fulton asserted that Claimants withdrew thousands of dollars per year from the various accounts and those withdrawals had a financial impact on the accounts, as the withdrawals exceeded earnings.

Fulton raised the affirmative defenses of a failure to state a claim upon which relief can be granted; no violation of any rules, regulations or applicable laws; laches; ratification, estoppel and waiver; claims barred by the applicable statute of limitations; failure to mitigate damages; and any losses were attributable to market conditions and not to any fault on the part of Fulton.

RELIEF REQUESTED

Claimants requested damages of at least \$100,000.00; restitution for excessive commission; restitution for margin interest; and punitive damages.

PSI requested that the Statement of Claim be dismissed and all costs associated with the defense of this matter be assessed against Claimants.

Fulton requested that the Statement of 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 the NASD.

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. That Respondents PSI and Fulton are jointly and severally liable to and shall pay to Claimants, Larry and Carole Waitz, \$77,600.00; and
2. That Respondent PSI is liable to and shall reimburse Claimants for the \$750.00 hearing session deposit previously submitted to the NASD Regulation; and
3. That each party shall bear its own costs and expenses with the exception of Forum Fees as discussed below; and
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333, PSI is assessed a member surcharge of \$350.00. PSI shall receive credit for the \$350.00 surcharge deposit, leaving no further member surcharge due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 Full Panel Prehearing Sessions x \$750.00 =	\$ 3,750.00
18 Hearing Sessions x \$750.00 =	\$13,500.00
Total Forum Fees =	\$17,250.00

Forum Fees are assessed to PSI. PSI shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation by Claimants and ordered to be reimbursed directly to Claimants in the Award section above, leaving Respondent PSI with a net Forum Fees assessment due of \$16,500.00.

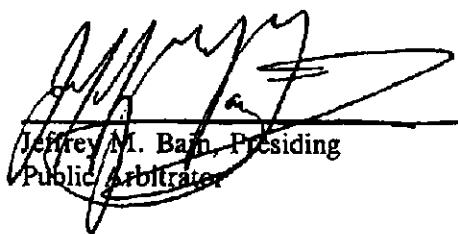
Fees are payable to the National Association of Securities Dealers Regulation, Inc.

980100

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/5/98



Jeffrey M. Barn, Presiding
Public Arbitrator

Wayne V. Lind
Public Arbitrator

Gary R. Miles
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 20, 1998

Date Decision Served by NASD

6-5-96

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/2/98

Jeffrey M. Bain, Presiding
Public Arbitrator

Wayne V. Lind
Wayne V. Lind
Public Arbitrator

Gary R. Miles
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 20, 1998

9300000

DATE

CONCURRING ARBITRATORS' SIGNATURES

Jeffrey M. Bain, Presiding
Public Arbitrator

Wayne V. Lind
Public Arbitrator

2-2-97

G. W. Miles

Gary R. Miles
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 20, 1998