

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant(s)

Estate of Doris C. Strother, et al.

96-04803

Name of Respondent(s)

Prudential Securities Inc
Frank Evans

REPRESENTATION

For Claimant Estate of Doris C. Strother, et al. ("Claimant") appeared Timothy L. Burke, Esq. of UAW-GM Legal Services Plan, located in Cheektowaga, NY.

For Respondents Prudential Securities Inc. and Frank Evans ("Respondents") appeared Jeanne Samuels, Esq., internal representation for Prudential Securities Inc., located in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on August 16, 1996. Claimant's Submission Agreement was signed on August 28, 1996.

A Joint Statement of Answer was filed by Respondents on January 21, 1997.

Respondent Prudential Securities Inc.'s Submission Agreement was signed on January 3, 1997.

Respondent Frank Evans did not file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions:

June 25, 1997

Two Sessions

The hearings were conducted at the Hyatt Regency Buffalo, located in Buffalo, New York.

CASE SUMMARY

Claimant alleged that in January 1991 an account was opened with Respondents. Claimant stated that in April 1991 \$103,010.73 was deposited into the above account. Claimant stated that in 1985 she had retired from her job at Western Electric and Trico and was living primarily off of her pension and Social Security. Claimant alleged that on May 21, 1997 an information sheet signed by the Respondent stated that her income was under \$50,000.00. Claimant alleged that while technically this statement was correct

her annual income was only approximately \$8,400.00

Claimant alleged that since she only had a high school education she was relying on Respondents' advice and recommendations in regards to investing the money in the account. Claimant alleged that Respondents engaged in excess trading and trading on margin. Claimant alleged that Respondents received commission on these trades which were not suitable for an estate or an elderly person. Claimant transferred approximately \$45,000.00 from the account. In October, 1995 the value of the account was \$24,502.02.

Respondents maintained that Claimant opened an account with them in January 1991. Respondents maintained that all industry regulations were followed in regards to the handling of the account. Respondents maintained that the Claimant's investment objectives and financial background were known to them. Respondents maintained that the investment objectives of the Claimant included income, speculation, and long term growth. Respondents maintained that Claimant was capable of reading account documentation, evaluating investment recommendations, knowingly accepted risk and authorized trading activity. Respondents maintained that the risks and benefits of each transaction were discussed with the Claimant before the transactions occurred. Respondents also maintained that at no time was Claimant concerned with safety of principle.

Respondents maintained that a separate information sheet was kept for the Claimant and for the various estates. Respondents maintained that the account was not traded on margin and the documentation did not permit margin trading for the account. Respondents maintained that Claimant was given a monthly statement of account and, therefore, no transactions could be done without Claimant's knowledge.

RELIEF REQUESTED

Claimant requested \$33,508.73 with interest from April 12, 1991 plus the commissions paid to Respondents and costs and disbursements for these proceedings.

Respondents requested that the Statement of Claim be dismissed in its entirety and all costs associated with these proceedings be assessed to the Claimant.

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 and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents be and are hereby liable jointly and severally and shall pay to Claimant \$39,500.00 with interest from the date of the decision.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$120.00 non-refundable filing fee previously paid by the Claimant and have assessed the following Forum Fees:

2 Hearing Sessions x \$400.00

\$800.00

Total Forum Fees

\$800.00

The arbitrators have determined that Respondents be and are hereby liable jointly and severally and shall pay 100% of the total forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc. and, therefore, Respondent shall pay \$400.00 to NASD Regulation, Inc. and shall pay Claimant \$400.00 as reimbursement of the hearing session deposit.

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

ARBITRATORS' SIGNATURES

I, Robert Gleichman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein, and who executed this instrument which is my award.



Robert Gleichman, Esq.
Public Chairperson

Date of Decision 9/2/97

I, Henry W. Cornell, III, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Henry W. Cornell, III
Public Panelist

I, Michael P. Hennigan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Michael P. Hennigan
Industry Panelist

2 Hearing Sessions x \$400.00 = \$800.00

Total Forum Fees = \$800.00

The arbitrators have determined that Respondents be and are hereby liable jointly and severally and shall pay 100% of the total forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc. and, therefore, Respondent shall pay \$400.00 to NASD Regulation, Inc. and shall pay Claimant \$400.00 as reimbursement of the hearing session deposit.

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

ARBITRATORS' SIGNATURES

I, Robert Gleichenhaus, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Robert Gleichenhaus, Esq.
Public Chairperson

I, Henry W. Cornell, III, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Henry W. Cornell, III
Public Panelist

Date of Decision 9/2/97

I, Michael P. Hennigan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Michael P. Hennigan
Industry Panelist

2 Hearing Sessions x \$400.00 - \$800.00

Total Forum Fees - \$800.00

The arbitrators have determined that Respondents be and are hereby liable jointly and severally and shall pay 100% of the total forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc. and, therefore, Respondent shall pay \$400.00 to NASD Regulation, Inc. and shall pay Claimant \$400.00 as reimbursement of the hearing session deposit.

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

ARBITRATORS' SIGNATURES

I, Robert Gleichenhaus, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Robert Gleichenhaus, Esq.
Public Chairperson

I, Henry W. Cornell, III, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Henry W. Cornell, III
Public Panelist

I, Michael P. Hennigan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

M.P.H.

Michael P. Hennigan
Industry Panelist

Date of Decision 9/2/97