

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Matthew Thaller,

Claimant,

v.

No. 96-04888

Prudential Securities, Inc.,
f/k/a Prudential Bache Securities, Inc.,
Alphonso J. Esparza, Gail B. Dellinger,
and Troy Sumrall,

Respondents.

REPRESENTATION OF PARTIES

Claimant Matthew Thaller ("Claimant") was represented by Dean J. Favret, Esq. of Favret, Demarest, Russo & Lutkewitte located in New Orleans, Louisiana.

Respondents Prudential Securities, Inc., f/k/a Prudential Bache Securities, Inc. ("PSI"), Gail B. Dellinger ("Dellinger"), and Troy Sumrall ("Sumrall") were represented by Earl S. Eichin, Jr., Esq. of O'Neal, Eichin, Miller, Saporito & Harris located in New Orleans, Louisiana.

Respondent Alphonso J. Esparza ("Esparza") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about November 4, 1996.

Claimant's Submission Agreement was signed on October 31, 1996.

The Statement of Answer of Respondents PSI, Dellinger and Sumrall was filed on or about August 1, 1997.

The Submission Agreement of Respondent PSI was signed on July 25, 1997.

The Submission Agreement of Respondent Dellinger was signed on November 4, 1997.

The Submission Agreement of Respondent Sumrall was signed on July 25, 1997.

The Statement of Answer of Respondent Esparza was filed on or about September 24, 1997.

The Submission Agreement of Respondent Esparza was signed on September 16, 1997.

HEARING INFORMATION

The hearing was held on March 3, 1998 for two (2) sessions, May 27, 1998 for two (2) sessions and May 28, 1998 for two (2) sessions. The hearing location was New Orleans, Louisiana.

CASE SUMMARY

Claimant alleged that Respondent Esparza, a registered representative with Respondent PSI, committed the following wrongful acts in his securities account: authorized and unauthorized purchase and sales of inappropriate stocks which were inconsistent with Claimant's investment objectives; churned Claimant's account by transacting excessive trades both in size and frequency and inconsistent with Claimant's investment objectives in order to realize excessive commissions; performed unauthorized buying and selling of securities; continuously misrepresented the worth of Claimant's assets and/or misrepresented the purpose of the excessive trading; performed unauthorized option trading; continuously failed to obtain Claimant's authorization before entering into the trading, purchasing and selling of securities in Claimant's account; and trading on margin in derogation of Claimant's investment objectives. Claimant contended that the actions of Respondent Esparza constituted: negligence, fraud, breach of fiduciary duty, breach of duty of loyalty and trust, breach of contract, and violation of applicable state and federal law. Claimant asserted that Respondent PSI is liable under the doctrine of respondeat superior. Claimant maintained that Respondents Dellinger and Sumrall either conspired with Respondent Esparza or negligently failed to supervise Respondent Esparza.

Respondents denied all liability to Claimant in their respective Statements of Answer. Respondents alleged that Claimant updated his account profile to show "speculation" as his only investment objective. Respondents contended that Claimant was in constant communication with Respondent Esparza and authorized and/or ratified each of the transactions in the account. Respondents asserted that Claimant withdrew more than \$61,000 from his account and that his net out-of-pocket loss was only \$18,579.89. Respondents contended that they fully disclosed all risks associated with the investment at issue and that Claimant accepted those risks.

RELIEF REQUESTED

Claimant requested an award of: loss of initial investment in the amount of \$28,000.00; gains / dividends in the amount of \$8,900.00; loss of growth potential; interest; commissions; attorney fees in the amount of \$15,000.00; mental anguish and inconvenience; and punitive damages in the amount of \$25,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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 Prudential Securities, Inc. and Alphonso J. Esparza are jointly and severally liable for and shall pay to Claimant Matthew Thaller compensatory damages in the amount of Thirty Three Thousand Dollars and No Cents (\$33,000.00), which sum is inclusive of attorney fees and costs;
- (2) That Respondents Prudential Securities, Inc. and Alphonso J. Esparza are jointly and severally liable for and shall pay to Claimant Matthew Thaller interest on the above sum at the Louisiana legal rate from January 24, 1994 until the date the award is paid in full;
- (3) That the panel finds contributory negligence on the part of Mr. Thaller for failing to review his account statements for eight months;
- (4) That all claims against Respondents Gail B. Dellinger and Troy Sumrall are hereby dismissed in their entirety with prejudice; and
- (5) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) hearing sessions x \$500 = \$3,000 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount

of \$1,000 (1/2 forum fees - hearing session deposit).

Pursuant to §10332(c) of the Code, Respondents are jointly liable for and shall pay forum fees in the amount of \$1,500 (1/2 forum fees).

Pursuant to Rule 10333 of the Code, Respondent PSI shall pay to NASD Regulation, Inc. the \$300 past due member surcharge previously invoiced.

Pursuant to §10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain as postponement fees the postponement deposit in the amount of \$500 previously deposited by the Claimant.

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

Concurring Arbitrators' Signatures:

\s\ Ashley L. Belleau, Esq.
Ashley L. Belleau, Esq.
Chairperson
Public Arbitrator

June 18, 1998
Dated:

\s\ Sherrill I. Davidson, Esq.
Sherrill I. Davidson, Esq.
Panelist
Public Arbitrator

June 13, 1998
Dated:

\s\ Charles E. Major, Jr.
Charles E. Major, Jr.
Panelist
Industry Arbitrator

June 11, 1998
Dated:

For NASD Regulation use only:
Date award served on parties:

June 19, 1998