

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

L. Richard Kawka, (Claimant) vs. Prudential Securities Incorporated, Gruntal & Co., L.L.C.,  
and Harry Krigman, (Respondents) vs. Daniel J. Coyne (Third-Party Respondent)

Case Number: 00-00792

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, L. Richard Kawka, hereinafter referred to as "Claimant": John A. Hobson, Esq.,  
Perkins, Thompson, Hinckley & Keddy, Portland, ME.

Respondent, Prudential Securities Incorporated ("Prudential"), did not appear at the hearing  
in this matter. Previously represented by: William H. Freilich, Esq., Senior Vice President  
and Associate General Counsel, Prudential Securities Incorporated, New York, NY.

Respondent, Gruntal & Co., L.L.C. ("Gruntal"), did not appear at the hearing in this matter.  
Previously represented by: Joseph A. Vallo, Esq., Vice President and Assistant General  
Counsel, Gruntal & Co., L.L.C., New York, NY.

Respondent, Harry Krigman ("Krigman"): Daniel J. Mitchell, Esq., Bernstein, Shur, Sawyer  
& Nelson, P.A., Portland, ME.

Third-Party Respondent, Daniel J. Coyne ("Coyne"), did not appear at the hearing in this  
matter. Previously represented by: Jennifer S. Riggle, Esq., Germani & Riggle, LLC,  
Portland, ME.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 2000.

Response to Prudential's Motion to Dismiss filed by Claimant on or about: October 5, 2000.

Claimant signed the Uniform Submission Agreement: February 22, 2000.

Statement of Answer and Motion to Dismiss filed by Prudential on or about: June 6, 2000.

Prudential did not sign a Uniform Submission Agreement.

Statement of Answer filed by Gruntal on or about: May 26, 2000.

Gruntal signed the Uniform Submission Agreement: May 26, 2000.

Statement of Answer filed by Krigman on or about: May 26, 2000.

Amended Statement of Answer and Third-Party Claim against Coyne filed by Krigman on or about: December 15, 2000.

Second Amended Statement of Answer and Third-Party Claim against Coyne filed by Krigman on or about: December 27, 2000.

Statement of Answer to Coyne's Crossclaim filed by Krigman on or about: March 26, 2001.

Krigman signed the Uniform Submission Agreement: May 24, 2000.

Statement of Answer and Crossclaim against Krigman filed by Coyne on or about: February 9, 2001.

Coyne signed the Uniform Submission Agreement: February 9, 2001.

#### CASE SUMMARY

Claimant asserted the following causes of action: unauthorized transactions; conversion; breach of fiduciary duty; negligence; misrepresentation; fraud; and breach of contract. Claimant's claim involved unspecified financial products.

Unless specifically admitted in his Answers, Krigman denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's Statement of Claim fails to state a claim upon which relief may be granted; Krigman acted in good faith and in compliance with all applicable rules and regulations and did not directly induce the alleged act or acts, if any, constituting alleged violations of law; the damages allegedly suffered by Claimant are not causally related to any act or omission by Krigman, or are legally attributable to Claimant and/or Coyne; Claimant's claims are barred by the doctrines of estoppel, ratification, affirmance, laches, waiver, and unclean hands; Claimant's alleged injuries, if any, were caused, in whole or in part, by Claimant and/or Coyne; Claimant's claims are barred by the applicable statutes of limitations; at all relevant times, Krigman acted in his capacity as an authorized agent of Gruntal; Claimant did not reasonably rely to his detriment upon any representations or actions by Krigman; the transactions complained of by Claimant were duly authorized by Coyne, a joint account holder, who at all times possessed authority to direct transactions with respect to the joint account of Claimant and Coyne; Claimant's claims are barred by his failure to mitigate his damages; Claimant's claims are barred by his assumption of risk of loss and by his own contributory negligence; and Claimant's claims are barred by any other matter constituting an avoidance or affirmative defense.

In his Third-Party Claim, Krigman asserted the following causes of action: any losses in Claimant's account were due to the actions of Coyne, the joint account holder of said account; Krigman merely followed Coyne's instructions with respect to the joint account Coyne held with Claimant; and to the extent that Claimant might make out a claim against Krigman, it is clear that Coyne is or may be liable in contribution to Krigman for some or all of Claimant's claim.

Unless specifically admitted in his Answer, Coyne denied the allegations made in the Third-Party Claim and asserted the following defenses: the Third-Party Claim fails to state a claim upon which relief may be granted; Coyne is not an indispensable party to this action; and Krigman's claims are barred by the doctrines of estoppel, waiver, and unclean hands.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$68,000.00, plus interest, costs, attorneys' fees, and punitive damages.

Krigman requested that the Panel dismiss the Statement of Claim and award him his costs for defending this action.

In his Third-Party Claim, Krigman requested contribution and/or indemnification from Coyne in the event that the Panel finds against Krigman and in favor of Claimant.

Coyne requested that the Panel dismiss the Third-Party Claim asserted against him and award him his costs and such other relief as the Panel deems appropriate.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

In his October 5, 2000 Response to Prudential's Motion to Dismiss, Claimant informed NASD Dispute Resolution, Inc. that he was dismissing all claims against Prudential in this matter.

Prior to the hearings in this matter, Claimant entered into a settlement agreement with Gruntal.

By letter dated August 20, 2001, Coyne advised NASD Dispute Resolution, Inc. that he would not be attending the hearing scheduled for August 21, 2001, and that he was withdrawing his Crossclaim against Krigman.

Upon review of the file and the representations made on behalf of Krigman, the undersigned arbitrators (the "Panel") determined that Coyne has been properly served with the Third-Party Claims and received due notice of the hearing, and that arbitration of the matter would proceed without Coyne present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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.

### **AWARD**

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

1. Krigman be and hereby is solely liable for and shall pay to Claimant the sum of \$18,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. Coyne be and hereby is solely liable for and shall pay to Krigman the sum of \$9,000.00 as compensatory damages.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
Third-Party Claim filing fee	= \$ 225.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Prudential Securities Incorporated and Gruntal & Co., L.L.C are parties.

#### **Prudential Securities Incorporated**

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 200.00

#### **Gruntal & Co., L.L.C.**

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

June 26 & 27, 2001, adjournment by Coyne	= \$ 750.00
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### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: April 17, 2001	1 session

Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: August 21, 2001	2 sessions

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Total Forum Fees	= \$2,250.00
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1. The Panel has assessed \$750.00 of the forum fees against Claimant.
2. The Panel has assessed \$750.00 of the forum fees against Krigman.
3. The Panel has assessed \$750.00 of the forum fees against Coyne.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$ 450.00

2. Prudential be and hereby is solely liable for:

<u>Member Fees</u>	= \$1,200.00
Total Fees	= \$1,200.00
<u>Less payments</u>	= \$1,600.00
Refund Due Prudential	= \$ 400.00

3. Gruntal be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$4,600.00
Refund Due Gruntal	= \$1,500.00

4. Krigman be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$1,425.00
Refund Due Krigman	= \$ 450.00

5. Coyne be and hereby is solely liable for:

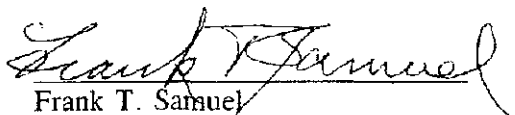
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$1,500.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Frank T. Samuel	-	Public Arbitrator, Presiding Chair
William R. Harding, CPA	-	Public Arbitrator
Thomas L. Kennedy, CPA	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
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Frank T. Samuel  
Public Arbitrator, Presiding Chair

09-18-01  
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Signature Date

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William R. Harding, CPA  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas L. Kennedy, CPA  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

October 5, 2001  
\_\_\_\_\_  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Frank T. Samuel	-	Public Arbitrator, Presiding Chair
William R. Harding, CPA	-	Public Arbitrator
Thomas L. Kennedy, CPA	-	Industry Arbitrator

Concurring Arbitrators' Signatures

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Frank T. Samuel  
Public Arbitrator, Presiding Chair

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Signature Date

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*William R. Harding, CPA*  
William R. Harding, CPA  
Public Arbitrator

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*9/12/01*  
Signature Date

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Thomas L. Kennedy, CPA  
Industry Arbitrator

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Signature Date

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October 5, 2001  
Date of Service (For NASD office use only)



**ARBITRATION PANEL**

Frank T. Samuel	-	Public Arbitrator, Presiding Chair
William R. Harding, CPA	-	Public Arbitrator
Thomas L. Kennedy, CPA	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

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Frank T. Samuel  
Public Arbitrator, Presiding Chair

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Signature Date

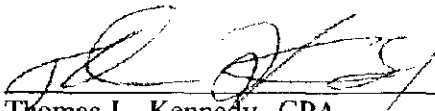
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William R. Harding, CPA  
Public Arbitrator

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Signature Date

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Thomas L. Kennedy, CPA  
Industry Arbitrator

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7/14/01  
Signature Date

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October 5, 2001  
Date of Service (For NASD office use only)