

In The Matter Of The Arbitration Between:

**THOMAS H. WILSON,**

Claimant

**DECISION**

**PCX 01-S024**

And

**PRUDENTIAL SECURITIES INCORPORATED**

Respondent

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant's on October 30, 2001 and the Answers of Respondent, hereby render the following Decision pursuant to Rule 12 of the Rules of the Board of Governors of the Pacific Exchange:

### **REPRESENTATION OF PARTIES**

Claimant: William P. Torngren

Respondent: Cameron Stout and Christopher Stecher, of Keesal Young & Logan

### **SUMMARY OF FACTS**

Thomas H. Wilson seeks recovery from Prudential Securities of \$1,047,853 lost on the purchase of PHP stock over the period of May 1995 through October 1999. Mr. Wilson's net loss from purchases of PHP from Prudential Securities was \$607, 590 and \$440,263 from purchases of PHP from Charles Schwab. In addition he seeks preaward interest.

Mr. Wilson eventually had three accounts at Prudential. These accounts owned many shares, over time, of only PHP stock. Mart Wilson was a wealthy real estate developer who stated to Prudential that he had a net worth of over \$19,000,000.

Mr. Wilson bought the PHP stock through a DC Branch broker, Robert Balachowski. The claimant alleges that Mr. Balachowski misrepresented facts regarding himself and PHP through false oral statements and that Mr. Wilson justifiably relied on these false statements with the result that Claimant held onto PHP stock, and indeed purchased more, after the stock declined and after a series of events which indicated further losses in the stock's value. Mr. Wilson claims to have done so based on statements from Mr. Balachowski. Indeed, Mr. Wilson claims that he was so persuaded by Mr. Balachowski's representation

that he opened an account at Charles Schwab and bought PHP stock for that account.

Respondents deny that there were significant false statements and to the extent there were, they were not material and that Mr. Wilson's continuing purchase of PHP at Prudential after the initial recommendation of 200 shares in May 1995 was based on Mr. Wilson's own research and his own decision process. Mr. Wilson relied on his own resources, including frequent contact with the CFO of PHP, daily monitoring of the stock and review of all Internet news stories or research publications on PHP.

### **ISSUES PRESENTED**

**Fraud, Misrepresentation, False Statements;  
Justifiable Reliance;  
Causation:  
Damages; Preaward Interest; Costs of Arbitration.  
Statutes of Limitations**

### **FINDINGS AND DECISION**

#### **A. Findings of Fact:**

- 1. The only statements alleged to have been false and proven to have been false were: a.) the number of shares of PHP owned by Balachowski and the amount of money he had invested in PHP; and, b.) the exact number of years (15 or 20 or 25) Mr. Balachowski had been a stock broker prior to September 1994. Mr. Balachowski denied making any statement about his stock ownership number or value. Nonetheless, both of these statements, false or not, were not found to be material and Mr. Wilson's losses did not result from them.**
- 2. Statements that Mr. Balachowski had a personal relationship with Charles Robbins was shown to be true. Statements that others were buying PHP even when it was declining in value were true; Mr. Balachowski bought after the decline in PHP value occurred.**
- 3. Not proven was the alleged falseness of statements that no one was selling during the decline of PHP value.**
- 4. Controverted, and thus not proven, was the allegation that Mr. Balachowski caused Mr. Wilson to get into the disastrous option trading. Mr. Balachowski said Mr. Wilson got the idea from a friend who was a very active options trader and who provided Claimant with strategies which he frequently discussed with Mr. Balachowski. Mr. Wilson was found to have been a very self-directing decision maker, who relied on his own resources and**

rationale. He is not one who could easily be talked into doing things against his judgment. Indeed, Mr. Balachowski testified that he and Mr. Wilson had discussed stop loss order, but that Mr. Wilson didn't want to do that. Further, Mr. Balachowski said that he advised Wilson to sell PHP, but that Mr. Wilson refused. Whether these discussions actually occurred is not a finding; that they illustrate the sort of investor Mr. Wilson was is a finding. Mr. Wilson was his own person. Mr. Scott apparently never provided his opinion. Mr. Scott never entered buy or sell orders. Mr. Wilson's action showed that he was a true believer in PHP and would not let it go. He was a knowledgeable investor. Although he may have been somewhat impressed that Mr. Balachowski owned PHP, he was far more impressed that Roy Disney and Mr. Klugge bought PHP following the shareholder class action filing.

5. Statements about PHP being undervalued and not headed for bankruptcy were opinions which are not the substance for fraud or deceit or misrepresentations.
6. Allegations that personal friendship with the Officers of PHP could lead Mr. Wilson to believe that Mr. Balachowski had inside information cannot be a basis for damages against Mr. Balachowski or Prudential. If indeed Mr. Wilson received inside information, he cannot now complain that it hurt him if he relied on it and could be said to be an accomplice in the illegal activity.
7. With regard to the Statutes of Limitations, the panel found that Respondents failed to prove that the claims based on dishonesty, false representations, or fraud were barred.
8. Prudential is not without criticism here, even though its errors and those of its agent, Mr. Balachowski, were not a cause, let alone the cause, of Mr. Wilson's loss. Apparently Mr. Balachowski executed trades of the Bundes Bank Bonds before being registered in California. After the initial purchases of PHP, all trades were hardly solicited even though failure to mark them apparently rendered them as solicited by default. If true, Mr. Balachowski's discussion of other investor's buying or not selling PHP is not good practice. And the obvious problem of permitting what may have been inside information to be conveyed to an investor is unacceptable supervision.

#### **B. Decision.**

After considering the argument and evidence of both Claimant and Respondent in this matter, the undersigned Arbitrators make the following decision:

1. Claimant shall not recover damages from Respondent;
2. The forum fees shall be paid 50/50 by Claimant and Respondent and each shall bear their own costs of arbitration.

Dated: 7/19/04



Thomas D. Reese, Chair

Dated: \_\_\_\_\_

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Sterling Frost

Dated: \_\_\_\_\_

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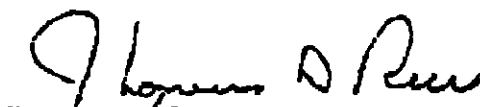
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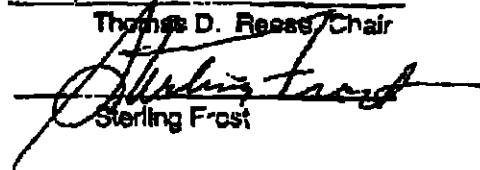
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