

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-05771

Jean Kerner, Claimant vs. Joel Kaplan and Prudential Securities, Inc., Respondents.

ATTORNEYS:

For Claimant, Jean Kerner, ("Claimant") appeared Paul C. Kurland, Esq., of the firm Snow Becker Krauss, P.C. New York, NY.

Respondents, Prudential Securities, Inc., and Joel H. Kaplan, (collectively "Respondents") appeared through their in-house counsel, Patricia A. Fitzpatrick, Esq., New York, NY.

DATE FILED: September 27, 2002

CASE SUMMARY: Claimant alleged that Respondents made unsuitable purchases of bonds of Loehmann's Inc., Globstar L.P., Singer Company N.V. Notes, National Energy Group Inc. for her account, and violated the rules and regulations of the NASD. Claimant maintained that due to Respondents' actions, her account suffered loss.

Claim Data

Claim: \$25,000.00
Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$25,000.00
Attorney Fees: \$.00
Filing Fees: \$212.50
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the claimant \$25,000.00. 2) All requests for attorney fees are denied. 3) All other relief requests are denied. 4) The \$425.00 filing fee previously deposited with NASD Dispute Resolution by the claimant, shall be retained by NASD Dispute Resolution. 5) Respondents are jointly and severally liable and shall pay claimant \$212.50 as reimbursement of one half of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent, Prudential Securities, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

OTHER ISSUES: Arbitrator's Report: Addendum to Award.

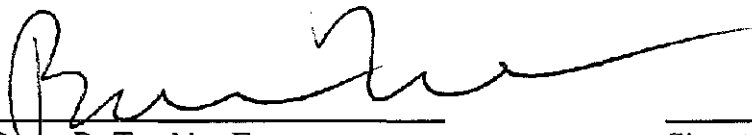
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Barry R. Temkin, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Barry R. Temkin, 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.



Barry R. Temkin, Esq.

Signature Date

June 2, 2003
Date of Service (For NASD-DR office use only)

Addendum to Award
Case of *Jean Kerner v. Prudential Securities*
NASD NO.: 02-05771

The claimant Jean Kerner is an 88-year-old widow whose date of birth is April 20, 1914. She resides in a New York City apartment where she supports herself on Social Security payments, and income derived from individual retirement accounts and treasury bonds. In 1996, when Ms. Kerner was 82 years old, she received a cold call from respondent Kaplan, who identified himself as a registered representative of respondent Prudential. According to the statement of claim, Ms. Kerner told Kaplan that she was interested in conservative investments that would furnish income during her waning years. In November 1996, Kaplan completed a new account form at Prudential in which he wrote that Ms. Kerner's primary investment objective was income, with a secondary investment objective of long term growth.

In 1997, Kaplan recommended the purchase of 5000 units of a high yield "junk" bond in Loehmann's Inc., which offered interest at a rate of 11.87%. Three years later, in March 2000, Loehmann's filed for bankruptcy and Ms. Kerner's holdings were redeemed for a total of \$1,606.67, resulting in a loss of \$3,707.07.

In December 1997, respondents recommended the purchase of 5000 units of National Equity Trust Portfolio Series for a cost of \$5,000, which also suffered a substantial decline. Also in December 1997, claimant purchased, upon the recommendation of respondents, a high yield corporate bond in Globalstar LP, which paid 11 % interest. Ms. Kerner was not advised that Globalstar was a startup, high risk company which had sustained net losses of \$ 234 million in the 3 ½ years prior to

Kaplan's recommendation of it. Thereafter, Globalstar defaulted on its bonds resulting in a total and complete loss of Ms. Kerner's investment of \$10,495.88.

In January 1998, Kaplan recommended and Kerner brought 10,000 units of Singer Company N.V. Notes at a total cost of \$9,330.81. This company also went bankrupt, resulting in a loss of virtually all of Ms. Kerner's investment, an amount equaling \$8,836.06.

Ms. Kerner similarly lost \$3,506.23 on her initial investment of \$5,038.00 in National Energy Group Inc., another high yield junk bond recommended to her by Kaplan. The total losses sustained by Ms. Kerner on the five high yield junk bonds at issue are \$27,754.00.

The submissions of the parties tend to corroborate Ms. Kerner's contention that she relied upon the income from her account at Prudential to meet her ongoing daily living expenses. Of the total cash investment in the account of \$126,000, approximately \$66,000, or over half, was paid out for ongoing living expenses. See Equality Analysis annexed as Exhibit C to respondents' answer. Over the life of the account, the claimant wrote out 67 separate individual checks from the Prudential account, most of which were in small amounts, including regular periodic payments in the amount of \$609.12. Thus, there is every reason to believe that the monies invested by Ms. Kerner at Prudential were funds that she required for her ongoing, everyday living expenses.

Discussion

Rule 2310 (a) of the National Association of Securities Dealers requires a stockbroker prior to making a recommendation in any given security, to "have reasonable

grounds for believing that the recommendation is suitable for such customer," based upon the customer's disclosed "financial situation and needs." NASD Rule 2310(a)).

Thus, any individual recommendation of any particular transaction in an account must have a reasonable basis and must be tailored to the disclosed financial needs and wherewithal of the customer. In the instant case, Globalstar, Loehmann's, National Equity, Singer and National Energy were all high-yield, high-risk bonds which were unsuitable for an investor of Ms. Kerner's age and investment wherewithal. These were highly speculative investments which contained unreasonably high levels of risk for an elderly widow of limited means.

Ms. Kerner's remaining contentions, alleging breach of contract, fraud and breach of fiduciary duty are all denied due to lack of evidence.