

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

William and Mary McElwee

and

03-05030  
Milwaukee, Wisconsin

Name of Respondents

Prentice Securities, Incorporated  
Louis M. Kornman  
Spencer D. Thomas  
A. PLUMM Company

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Nature of the Dispute: Customer vs. Terminated Member, Associated Persons and Non-Member.

**REPRESENTATION OF PARTIES**

William and Mary McElwee ("Claimants") were represented by Patrick J. Schott, Schott, Bublitz & Engel, S.C., Brookfield, Wisconsin

Prentice Securities, Incorporated ("Respondent Prentice") did not appear or participate.

Louis M. Kornman ("Respondent Kornman") did not appear or participate.

Spencer D. Thomas ("Respondent Thomas") appeared at the hearing *pro se*.

A. PLUMM Company ("Respondent Plumm") did not appear or participate.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 9, 2003. Submission Agreement of Claimants William and Mary McElwee was signed on July 17, 2003.

Submission Agreement of Respondent Spencer D. Thomas was signed on September 4, 2003

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Federal and State securities law, violation of the NASD Rules of Fair Practice, specifically breach of contract; negligence; failure to supervise; breach of fiduciary duty; misrepresentations/non-disclosures; omission of facts and

suitability. The causes of action relate to the recommendation and solicitation to purchase "highly speculative" corporate bonds from Geneva Steel, Inc.; Northwestern Steel and Wire, Sr. NTS and Imperial Credit Sr. NTS.

Respondent, Spencer D. Thomas, at hearing, denied several of the allegations made in the Statement of Claim and asserted the following defense:

1. That the Claimants were advised that the high yield corporate debt securities were rated B2 and were not the same as municipal bonds.
2. That the Respondent may be guilty of poor judgment but did not intentionally deceive or defraud the Claimants.
3. That the Respondent's commission on the sale of high yield corporate debt securities was the same as the commission he received for sale of municipal bonds.
4. That the high yield corporate debt securities purchased by the Respondent on behalf of the Claimants were not a large percentage of the Claimants' investments.
5. That the high yield corporate debt securities purchased by the Respondent on behalf of the Claimants were recommended by Bankers Trust, Lehman Brothers and others.
6. That all trades in the Milwaukee office of Prentice Securities were approved by Louis D. Kornman and the compliance officer.
7. That no evidence is submitted by the Respondent because he has not been allowed access to the company's records.

#### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$39,452.13
Punitive Damages	\$39,452.13
Interest	\$ 9,468.51
Attorneys' Fees	Unknown
Other Costs	Unknown

Respondents made no requests.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators, Sharon K. Imes, Public Arbitrator, Chair; P. J. Boylan, Public Arbitrator, Panelist, and Linda A. Pawlisz, Non-Public Arbitrator, Panelist determined, based upon NASD representations, that Respondents, Prentice Securities, Incorporated, Louis M. Kornman, Spencer D. Thomas, and A. PLUMM Company have been properly served with the Statement of Claim; that only Spencer D. Thomas received due notice of the hearing; that the others were not provided with due notice based upon representations that all are in bankruptcy, and that arbitration of the matter, upon advice from

the NASD, would proceed with only respondent, Spencer D. Thomas present, as agreed to by the Claimants and Respondent, Spencer D. Thomas.

Several other issues were raised at the time of hearing. Included were the following:

1. Violation of SEC Chapter DFI – Section 6, Fraudulent Practices and Rule 15c1-2 – Fraud and Misrepresentation.
2. Respondents Prentice Securities, Incorporated, Louis M. Kornman, and A. PLUMM Company, although served with notice of claim, were not served with notice of hearing based on a belief they are in bankruptcy and were not present at the hearing.
3. Since Respondents Prentice Securities, Incorporated, Louis M. Kornman, and A. PLUMM Company were not served with notice of hearing, the Panel cannot move forward with the statement of claim against these respondents.

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 the NASD Dispute Resolution (the "NASD").

### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent, Spencer D. Thomas, exercised poor judgment when he purchased high yield corporate debt securities rated B2 on behalf of the Claimants, even though he considered Claimant's tax status and invested only a small amount of the Claimants' total portfolio, given the Claimants' ages at the time of the investment and the Respondent's knowledge that the claimants had been retired for a number of years and that they desired investments intended to preserve capital and provide cash.
2. That Respondent, Spencer D. Thomas, misrepresented this investment by specifically not revealing the risk of the purchases to the Claimants.
3. That Respondent, Spencer D. Thomas, is not a principal in this dispute.
4. That investments made on behalf of the Claimants by Respondent, Spencer D. Thomas, were subject to supervision and approval by Louis M. Kornman.
5. That for the wrongdoing identified above, Respondent, Spencer D. Thomas, is liable for the sum of \$4,000 plus interest at 12% to begin to accrue after 30 days if this amount has not been paid to the Claimants.
6. That no liability for fees are assessed since no evidence as to those costs was provided.

7. That breach of contract by Respondent, Spencer D. Thomas, was not proven in that the account information provided as evidence of the contract was not sufficiently complete and, therefore, could not be relied upon as proof of contract.
8. That while fraud was raised as an issue at hearing, no findings were made with respect to this issue since it was not raised in the initial claim against the respondents and since the evidence did not support a finding of fraud on behalf of Respondent, Spencer D. Thomas.
9. That the statute of limitations argument raised by Respondent, Spencer D. Thomas, was not considered since no evidence pertaining to this issue was provided.
10. That Respondent, Spencer D. Thomas, is not jointly and severally liable for the Claimants' sum of \$39,452.13 as compensatory damages, sum of \$39,452.13 as punitive damages and interest in the amount of \$9,468.51.
11. That if other respondents had been represented at this hearing and had not provided evidence to the contrary, this award would be different since the evidence submitted in this record establishes liability on behalf of certain principals identified in this dispute.
12. That the case against Respondents Prentice Securities, Incorporated, Louis M. Kornman, and A. PLUMM Company is dismissed without prejudice.
13. 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.
14. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$225.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Prentice Securities, Incorporated.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	3,550.00

**Forum Fees and Assessments**

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

1 Pre-hearing session(s) with Panel	x	750.00	\$	750.00
	March 17, 2004	1 session		
2 Hearing sessions	x	750.00	\$	1,500.00
	June 9, 2004	2 sessions		
Total Forum Fees			\$	2,250.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Spencer D. Thomas.

**Fee Summary**

Claimants, William and Mary McElwee shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	225.00
Total Fees	= \$	225.00
<u>Less payments</u>	= \$	-975.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

Respondent, Spencer D. Thomas, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$	2,250.00
Total Fees	= \$	2,250.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Sharon K. Imes - Public Arbitrator, Presiding Chair  
P. J. Boylan, Esq. - Public Arbitrator  
Linda A. Pawlisz - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sharon K. Imes  
Sharon K. Imes  
Public Arbitrator, Presiding Chair

September 19, 2004  
Signature Date

/s/ P.J. Boylan  
P. J. Boylan, Esq.  
Public Arbitrator

September 14, 2004  
Signature Date

/s/ Linda A. Pawlisz  
Linda A. Pawlisz  
Non-Public Arbitrator

September 22, 2004  
Signature Date

Date of Service: \_\_\_\_\_

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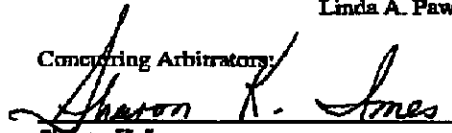
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P. J. Boylan, Esq. - Public Arbitrator  
Linda A. Pawlisz - Non-Public Arbitrator

Concerning Arbitrators:

  
Sharon K. Imes  
Public Arbitrator, Presiding Chair

9/19/04  
Signature Date

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P. J. Boylan, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Linda A. Pawlisz  
Non-Public Arbitrator

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P. J. Boylan, Esq. - Public Arbitrator  
Linda A. Pawlisz - Non-Public Arbitrator

Concurring Arbitrators:

Sharon K. Innes  
Public Arbitrator, Presiding Chair

Signature Date

P. J. Boylan  
P. J. Boylan, Esq.  
Public Arbitrator

9-14-04  
Signature Date

Linda A. Pawlisz  
Non-Public Arbitrator

Signature Date

Date of Service: \_\_\_\_\_



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P. J. Boylan, Esq. - Public Arbitrator  
Linda A. Pawlisz - Non-Public Arbitrator

Concurring Arbitrators:

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Sharon K. Imes  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
P. J. Boylan, Esq.  
Public Arbitrator

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

*Linda A. Pawlisz*  
\_\_\_\_\_  
Linda A. Pawlisz  
Non-Public Arbitrator

*9/22/04*  
\_\_\_\_\_  
Signature Date

Date of Service: *9/22/04*