

N.A.S.D. AWARD--

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Charles Benjamin

Claimant

90-03029

Prudential Securities Inc.

Respondent

REPRESENTATION

For Claimant: Steven J. Mitchel, Esq. of Gold & Mitchel, P.A.

For Respondent: Kevin Hurley, Esq., in house counsel at Prudential Securities, Inc.

CASE INFORMATION

Claimant executed a submission agreement on February 5, 1991 and filed a Statement of Claim on October 26, 1990.

Respondent executed a submission agreement on August 9, 1991 and filed a Statement of Answer on June 21, 1991.

HEARING INFORMATION

Hearing Date/Sessions: August 9, 1991: one session.

Hearing Location: New York, New York.

This hearing session was conducted telephonically with Claimant's counsel, Respondent's counsel, the panel members, and the NASD Staff Attorney present. The panel asked both counsel to present oral arguments limited to Claimant's Motion to Bar Respondent's Answer and Respondent's Motion to Stay or Dismiss.

CASE SUMMARY

Claimant alleged that he was contacted by one of Respondent's account executives and was induced by intentional misrepresentations to purchase the VMS National Residential Portfolio I Partnership ("VMS NRP I"). He further

alleged that, unknown to him, a Prudential Securities agent filled out the questionnaire-credit application pertaining to VMS NRP I and that his signature was forged on both the application as well as the Security Agreement and Promissory Note. He also alleged that he was never provided with the prospectus or any other offering material. Claimant filed a Motion to Transfer Situs to Florida on June 11, 1991. Claimant filed a Motion to Bar Respondent's Answer on June 11, 1991, alleging that as of that date Respondent had not filed any documents whatsoever. Claimant filed a Motion to Compel Production on July 15, 1991. In response to Respondent's Motion to Stay and/or Dismiss, Claimant argued that Respondent should be barred "from presenting any matter, argument or defenses" since Respondent had failed to file any response until several months after its response was originally due.

Respondent denied all allegations of wrongdoing. Respondent filed a Motion to Stay and/or Dismiss alleging that Claimant is a member of a class of investors who had brought claims against Respondent in the United States District Court for the Northern District of Illinois, and that a settlement had been reached. It further alleged that Claimant did not opt out of the settlement, so that his present claims against Respondent are barred. In response to Claimant's Motion to Bar Respondent's Answer, Respondent argued that Claimant did not suffer any prejudice as a result of the late filing of its Answer.

RELIEF REQUESTED

Claimant requested damages of \$121,250.00 as well as treble damages pursuant to Florida statute 772.11, prejudgment interest, attorneys's fees and costs. Claimant also requested that Claimant's Motion to Transfer situs be granted, that Claimant's Motion to Bar Respondent's Answer be granted and that Respondent's Motion to Stay and/or Dismiss be denied.

Respondent requested that the arbitration be stayed pending Claimant's submission of written proof showing his exclusion from the settlement class, or in the alternative, that the Statement of Claim be dismissed and the Respondent be awarded costs. Respondent also requested that Claimant's Motion to Bar Respondent's Answer be denied.

AWARD

After considering the pleadings and the oral arguments presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Prior to the commencement of the first hearing session, the panel denied Claimant's Motion to Transfer Situs to Florida;
2. Claimant's Motion to Bar Respondent's Answer is denied; and

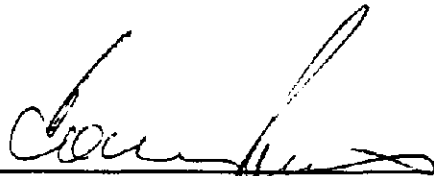
3. Respondent's Motion to Dismiss is granted with prejudice.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, forum fees of \$750.00 for one hearing session are assessed. Respondent Prudential Securities is directed to reimburse Claimant \$750.00, as Claimant has already paid this amount in the form of a hearing session deposit to the NASD.

The NASD will retain Claimant's \$200.00 non-refundable claim filing fee.

Concurring Arbitrators' Signatures:


Harry Weiss
Public Arbitrator

Executed on: August 20, 91

Date of Decision: September 6th, 1991

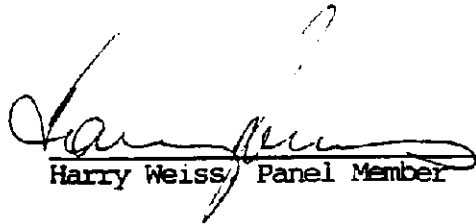
NATIONAL ASSOCIATION OF SECURITIES DEALERS

REPORT OF ARBITRATORS

NASD ARBITRATION NO. 90-03029

Charles Benjamin v. Prudential Securities, Inc.

The undersigned arbitrators direct that the Arbitration Staff forward a copy of this decision along with the Statement of Claim and Answer to the NASD District #10 Business Conduct Committee for its investigation into the late filing of Respondent's Answer. Respondent was served with Claimant's Statement of Claim by certified mail on February 22, 1991 and did not file an answer until June 21, 1991.


Harry Weiss, Panel Member

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 20th day of August, 1991, before me personally appeared Harry Weiss known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Lawrence Cooperman

LAWRENCE COOPERMAN
Notary Public, State of New York
No. 4965115
Qualified in Suffolk County 92
Commission Expires April 16, 19...

3. Respondent's Motion to Dismiss is granted with prejudice.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, forum fees of \$750.00 for one hearing session are assessed. Respondent Prudential Securities is directed to reimburse Claimant \$750.00, as Claimant has already paid this amount in the form of a hearing session deposit to the NASD.

The NASD will retain Claimant's \$200.00 non-refundable claim filing fee.

Concurring Arbitrators' Signatures:


Richard Baldwin, Esq.
Public Arbitrator

Executed on: 8/12/91

Date of Decision: September 6th, 1991

NATIONAL ASSOCIATION OF SECURITIES DEALERS

REPORT OF ARBITRATORS

NASD ARBITRATION NO. 90-03029

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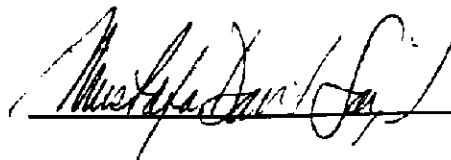
Richard Baldwin, Esq., Chairman

STATE OF: New York
COUNTY OF: New York

S.S.:

On this *twenty-eighth* day of *August*, 1991, before me personally appeared Bill Singer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

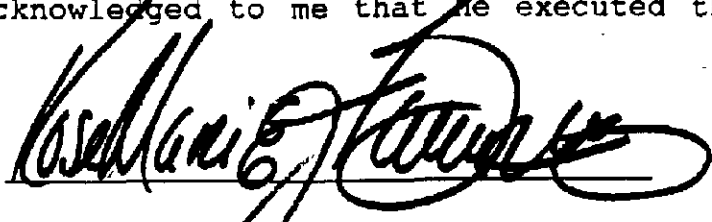
MUSTAFA DAVID SAYID
Notary Public, State of New York
No. 41-4928364
Qualified in Queens County
Commission Expires April 11, 1992



STATE OF: New York
COUNTY OF: New York

S.S.:

On this 18th day of August, 1991, before me personally appeared Richard Baldwin, Esq. known and known to me to be the individual described in, and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



ROSE MARIE J. BELLAFIORE
Notary Public, State of New York
No. 41-4500469
Qualified in: Queens County
Certificate Filed in New York County
Westchester County, Kings County
Nassau County & Suffolk County
Commission Expires Jan. 31, 1993


3. Respondent's Motion to Dismiss is granted with prejudice.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, forum fees of \$750.00 for one hearing session are assessed. Respondent Prudential Securities is directed to reimburse Claimant \$750.00, as Claimant has already paid this amount in the form of a hearing session deposit to the NASD.

The NASD will retain Claimant's \$200.00 non-refundable claim filing fee.

Concurring Arbitrators' Signatures:



Bill Singer, Esq.
Industry Arbitrator

Executed on: 8/28/91

Date of Decision: September 6th, 1991

NATIONAL ASSOCIATION OF SECURITIES DEALERS

REPORT OF ARBITRATORS

NASD ARBITRATION NO. 90-03029

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A handwritten signature in black ink, appearing to read 'Bill Singer', with a long, sweeping horizontal stroke extending to the right.

Bill Singer, Esq., Panel Member