

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Steven Schwartz

91-00525

Name of Respondents

Prudential Securities, Inc.  
Joseph Morris

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**REPRESENTATION**

Claimant Steven Schwartz ("Claimant") was represented by: Brian Shaughnessey, Esq. of Shaughnessey, Browski and Gagner.

Respondent Prudential Securities, Inc. ("Prudential") and Joseph Morris ("Morris") were represented by: Marc S. Dobin of Prudential Securities, Inc.

**CASE INFORMATION**

Statement of Claim filed on: December 18, 1991.

Claimant's Submission Agreement signed on: February 13, 1991.

Joint Statement of Answer filed by Respondents on: March 4, 1992.  
Respondents did not execute submission agreements.

**HEARING INFORMATION**

Pre-Hearing Conference: August 5, 1992, one session  
October 27, 1992, one session

Hearing Dates/Sessions: November 4, 1992, one session  
November 5, 1992, two sessions  
November 6, 1992, two sessions  
November 23, 1992, two sessions  
November 24, 1992, two sessions

December	7, 1992, two sessions
December	8, 1992, two sessions
January	6, 1993, two sessions
January	7, 1993, two sessions
January	8, 1993, two sessions
January	22, 1993, two sessions
February	26, 1993, two sessions
April	9, 1993, two sessions
April	28, 1993, two sessions

Hearing Location: NASD offices, Philadelphia, PA.

### CASE SUMMARY

Claimant Schwartz, a sophisticated investor, alleged that when he maintained his account at Advest Securities, Inc. ("Advest"), he traded options heavily and that trading at Advest was conducted through his account representative, Morris, one of the Respondents. While trading at Advest, Claimant alleged that he was charged a commission of no more than \$3.50 per contract for option contract trades.

Claimant alleged that in early 1986, Morris informed Claimant that Morris was transferring his employment from Advest to Respondent Prudential and that at that time, Morris requested that Claimant transfer his account from Advest to Prudential. Claimant further alleged that he informed Respondent Morris that he would be willing to transfer his account to Respondent Prudential provided the charge structure for account transactions, particularly the \$3.50 per contract commission charge for option contract trades, remained the same at Respondent Prudential as it had been at Advest.

When Respondent Morris joined Prudential in the fall of 1986, Claimant Schwartz alleged that he transferred his account to Prudential believing he would be charged no more than \$3.50 per contract for options trades. Claimant continued to heavily trade options at Prudential. Claimant alleged that during the next several months at Prudential, he was charged a \$3.50 per contract commission rate on several occasions, but the majority of the trades were charged at a commission rate of \$4.00 per contract and higher. Claimant alleged that he called the charges to Respondent Morris's attention on several occasions without receiving an adequate explanation from Morris. Claimant further alleged that the total commission overcharges that he suffered were approximately \$27,000.00.

Claimant further alleged that Respondents Morris and Prudential failed to properly execute and timely place several specific option orders during January and February 1987 and also failed to advise Claimant with respect to several trades in a timely manner. Because of Respondents actions and inactions, Claimant alleged that he lost approximately \$80,000.00 both from lost profits and actual losses.

Claimant also alleged Respondents Morris and Prudential have not provided requested documents, have made material misrepresentations to various regulatory entities and have attempted to coerce and deceive Claimant during various interviews with Respondent Prudential's management.

Claimant also alleged that Prudential failed to supervise the conduct of Morris and failed to supervise Claimant's account. Claimant alleged that Morris was able to use Prudential telephonic equipment to place several harassing telephone calls to Claimant and to make anti-semitic statements to Claimant.

On June 5, 1987 Respondent Prudential did make an adjustment to the account of Claimant in the amount of \$6,354.00 and that this amount, in the opinion of Claimant, grossly misrepresented his actual damages. Claimant alleged that despite repeated promises from Respondent Prudential throughout 1987 to adjust his account appropriately, Respondent Prudential engaged in intentional dilatory and deceptive practices with the sole purpose of delaying and frustrating any effort by Claimant to make himself whole.

Claimant maintained that because of an alleged blacklisting of Claimant by Respondent Prudential, Claimant has experienced great difficulty in transferring his account to another brokerage firm.

Respondents categorically denied all allegations of wrongdoing asserted by Claimant and specifically maintained that Claimant's account was properly handled by Respondent Morris at all times. Respondents alleged that Claimant Schwartz, a convicted felon, should not be believed. Respondents maintained that Claimant's account was never mishandled and that the commission charge per contract for option trades was either at a fixed rate or negotiated on a trade-by-trade basis, but was never at a rate of \$3.50 per contract.

Respondents maintained that Claimant profited from lower commission rate charges and commission adjustments voluntarily made by Respondent Prudential. Respondents alleged that Claimant engaged in various acts of impropriety at Respondent's place of business and during business hours, and that such improper conduct materially contributed to any losses that Claimant alleged that he has suffered.

Respondents maintained that the institution of the instant arbitration was merely a thinly veiled attempt at retribution by the Claimant against the individual Respondent Morris. Respondent Prudential maintained that at all times it properly supervised Respondent Morris and his handling of Claimant's account.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$107,559.64, plus 6% interest per annum; 2) punitive damages; 3) treble damages; 4) attorney fees and 5) costs of the arbitration.

Respondents requested all of Claimant's claims be denied.

**OTHER ISSUES CONSIDERED & DECIDED**

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 originals remain on file with the NASD.

The arbitrators have heard and decided various Motions made by all parties during these proceedings. No outstanding Motions remain to be decided.

Pursuant to the by-laws of the NASD, the Panel determined that Respondents Morris and Prudential were required to submit to this arbitration, notwithstanding their failure to submit executed Submission Agreements. Therefore, Respondents Morris and Prudential are bound by this Panel's rulings and determinations.

**AWARD**

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

1. Respondents Morris and Prudential are jointly and severally liable to Claimant Schwartz and shall pay to Claimant the sum of \$99,530.60; inclusive of interest.
2. All other claims and counterclaims, including Claimant's claim for punitive damages, are dismissed.
3. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 pre-hearing conference session x \$300.00 = \$600.00.


27 hearing sessions = \$20,250.00.

Pursuant to Section 43(c) of the Code forum fees in the amount of \$20,850.00 are jointly and severally assessed against Respondents Prudential and Morris.

Fees are payable to the National Association of Securities Dealers, Inc.

**CONCURRING ARBITRATOR'S SIGNATURE**

**PUBLIC/INDUSTRY**

  
Michel J. Landron, Esq.

  
Public Arbitrator

NASD Date of Decision: June 11, 1993

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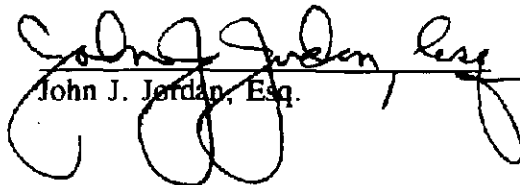
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**CONCURRING ARBITRATOR'S SIGNATURE**

**PUBLIC/INDUSTRY**

  
John J. Jordan, Esq.

6/10/93  
Public Arbitrator

NASD Date of Decision: June 11, 1993

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**PUBLIC/INDUSTRY**

  
Arthur B. O'Connor

  
Industry Arbitrator

NASD Date of Decision: June 11, 1993