

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Kenneth O. Huntingdon, et al.

91-01723

Name of Respondents

Prudential Securities Inc  
Arden H. Berg  
John A. Collura

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**REPRESENTATION**

For Claimant: Walter V. Hines, Esq. a Sole Practitioner.

For Respondents: Dennis J. Concilla, Esq. of Carlile Patchen & Murphy.

**CASE INFORMATION**

Statement of Claim filed: June 3, 1991.

Claimant's Submission Agreement signed on: May 21, 1991.

Joint Statement of Answer filed by Respondents, Prudential Securities, Inc., Arden H. Berg and John A. Collura on: August 19, 1991.

Respondent, Prudential Securities, Inc., Submission Agreement signed on: August 16, 1991.

Respondent, John A. Collura's Submission agreement signed on: July 31, 1991.

Respondent, Arden H. Berg did not submit a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:    April 27, 1992 - Two Sessions  
                                 April 28, 1992 - Two Sessions  
                                 November 2, 1992 - Two Sessions  
                                 November 3, 1992 - Two Sessions  
                                 November 4, 1992 - Two Sessions  
                                 December 21, 1992 - Two Sessions

Hearing Location: Columbus Bar Association, Columbus, Ohio.

CASE SUMMARY

Claimant alleges that Respondent, Arden Berg ("Berg") was his broker at Respondent, Prudential-Bache Securities, Inc. ("Prudential"). Claimant alleges that he told Berg that his investment objectives were growth and income. Claimant alleges that he has almost always followed Berg's advice and that he considered that Berg, as an investment expert, had control over his accounts. Claimant alleges that Berg knew that he was opposed to the extensive use of margin but that Berg began purchasing securities on margin in two of his four accounts.

Claimant alleges that he did not specifically and individually authorize the trades and that he knew nothing about the extensive use of margin in the accounts. Claimant alleges that the Respondents committed common law fraud and breached their fiduciary relationship with him. Claimant alleges that Respondents traded excessively in his account for the purpose of generating commissions. Claimant alleges that the Respondents, by misappropriating his funds by generating large commissions in all of his accounts and margin interest on two accounts, committed civil theft. Claimant alleges that contrary to his investment objectives Respondents engaged in a pattern of federal securities and state law violations and that those actions constituted a pattern of racketeering resulting in damage to him.

Claimant alleges that Respondent Prudential is liable based on their failure to supervise and control the accounts.

Respondents maintain that Claimant is a wealthy, educated and experienced investor who authorized every trade in his account. Respondents maintain that Claimant specifically discussed with Mr. Berg an approved each transaction before it was executed and received oral and written confirmation. Respondents maintain that the Claimant did not voice any complaints about purchasing securities on margin. Respondents maintain that Claimant was fully aware of all the risks involved with the different trades made in his account. Respondents maintain that Claimant took a more aggressive approach to trading due to the decline in his business. Respondents denied that Berg had discretion over the account and denied that the Respondents churned Claimant's accounts. Respondents maintain that information was provided to the Claimant so he could remain in control of his accounts.

### RELIEF REQUESTED

Claimant requested compensatory damages of \$203,987.00 plus interest, damages under the Ohio Civil Theft Statute and treble damages under the Federal Rico Statute, punitive damages, and reasonable attorney's fees.

Respondents requested that the claim be dismissed in its entirety and that costs are assessed in their favor.

### 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.

Respondent John Collura filed a Motion to Dismiss the Claims against him. The Motion was considered by the arbitration panel and granted. Therefore, the hearing proceeded against Prudential Securities, Inc. and Arden H. Berg, only.

### AWARD

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

1. Respondents, Prudential Securities, Inc. and Arden H. Berg are hereby jointly and severally liable to the Claimant in the sum of \$232,000.00 (**TWO HUNDRED THIRTY TWO THOUSAND DOLLARS AND NO CENTS**). This amount is inclusive of interest.
2. All other claims and counterclaims (if any), are hereby denied.
3. Each party shall bear their respective costs of this action, including attorneys fees.
4. Respondents are directed to re-imburse to the Claimant previously paid filing fees in the amount of \$1,250.00.

**FORUM FEES**

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

Non - refundable filing fee - \$250.00.

Hearing session fees (\$1,000 x 12 Sessions) = \$12,000.00.

1. Total forum fees in the amount of \$12,250.00 are hereby assessed against the Respondents, Prudential Securities, Inc. and Arden H. Berg, jointly and severally. As stated above. Respondents shall re-imburse to the Claimant filing fees of \$1,250.00.

Accordingly, Respondents are directed to pay the balance of \$11,000 to the NASD.

Concurring Arbitrator's Signature  
Name

Public Arbitrator

  
Merle H. Reissig

Date of Decision: March 29, 1993

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

Non - refundable filing fee - \$250.00.

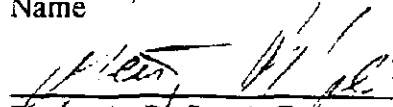
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Concurring Arbitrator's Signature

Name

  
Benjamin B. Segel, Esq.

Public Chairperson

Date of Decision: March 29, 1993

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Concurring Arbitrator's Signature  
Name

Industry Arbitrator

  
Robert A. Greenberg

Date of Signature: March 25, 1993  
~~Date of Decision:~~

NASD Date of Decision: March 29, 1993