

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimant

Alan M. Freund

91-02279

Name of Respondents

Prudential Securities Inc
Christopher Sargent

REPRESENTATION

For Claimant Alan M. Freund ("Claimant"): John L. Seibel, Esq., Attorney at Law.

For Respondent Prudential Securities Inc. ("Prudential"): William Freilich, Esq. of Prudential Securities Inc.

For Respondent Christopher Sargent ("Sargent"): Joseph A. Ingrisano, Esq. of Kutak Rock & Campbell.

CASE INFORMATION

Statement of Claim filed July 30, 1991.

Claimant's Submission Agreement signed on July 17, 1990.

Statement of Answer filed by Prudential on September 18, 1991.

Respondent Prudential's Submission Agreement signed on September 17, 1991.

Statement of Answer filed by Respondent Sargent on September 19, 1991.

Respondent Sargent's Submission Agreement signed on August 12, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 05, 1992 - two sessions
March 06, 1992 - two sessions
March 10, 1992 - two sessions
April 20, 1992 - one session

Hearing Location: NASD, INC., Washington, DC

CASE SUMMARY

Claimant alleged that Respondent Sargent breached his duties of fair dealing and care owed to Claimant during the years 1982 through 1991. Claimant alleged the objective of his investment account was to produce income and Respondent Sargent entered into an investment program involving margin trading at the maximum allowable margin rate of 50%. Claimant further alleged Respondent's investment strategy did not produce income as Claimant requested but required Claimant to deposit additional funds to meet margin calls and pay margin interest on the account. Claimant alleged Respondent Prudential was negligent in failing to supervise Claimant's account activity and ensure that the investment strategy used by Respondent Sargent was consistent with Claimant's needs. Claimant alleged that the investment strategy employed by Sargent for Claimant's account was inconsistent with Claimant's needs, aims and desires.

Respondent Sargent maintained that Claimant was aware of the use of margin in his account and was consulted before each transaction was executed in his account. Respondent further maintained Claimant was informed by a monthly statement of his margin indebtedness in his account and did not object once in eight years to the use of margin or the purchase or sale of any securities. Respondent Prudential maintained that it was not negligent in their duty of supervising Claimant's account or supervising the actions of Sargent. Respondent further maintained Claimant's account did not transfer from Thomson McKinnon Securities ("Thomson") to Prudential until September of 1989 and Prudential is not responsible for any alleged wrongdoing at Thomson. Respondent maintained that although Prudential and Thomson entered into an asset purchase agreement in July 1989, Prudential is not liable for any actions by Thomson or its employees prior to or after the transfer. Respondents maintained that Claimant's account was properly handled in accordance with his investment objectives.

RELIEF REQUESTED

Claimant requested compensatory damages in the total amount of \$400,000; \$300,000 from Respondent Sargent and \$100,000 from Respondent Prudential.

Respondent Sargent requested Claimant's claim be dismissed in its entirety and Sargent be awarded his costs and attorney's fees.

Respondent Prudential requested Claimant's claim for damages be denied in its entirety and Prudential be awarded its costs and fees.

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. Claimant's claim is dismissed in its entirety.
2. Claimant's hearing session deposit will be retained.
3. All other costs, including requests for attorneys fees are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees are equally assessed against Claimant and Respondents.

Claimant paid a hearing session fee of \$750.00

Seven hearing sessions were held at a cost of \$750.00 per hearing session
(7 sessions X \$750 = \$5,250)

Claimant is assessed forum fees in the amount of \$2625.00, but is entitled to offset this amount with his previously deposited hearing session fee of \$750.00 so that the amount due as hearing session fees from Claimant is \$1875.

Respondents are jointly and severally assessed forum fees in the amount of \$2625.00.

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

Concurring Arbitrator's Signature

Name

Perry E. Wallace, Jr., Esq.
Perry E. Wallace, Jr., Esq. - Chairman

Public/Industry

Public Arbitrator

Executed on:

~~DATE OF DECISION:~~

May 11, 1992

Date of Decision: June 9, 1992

1. Claimant's claim is dismissed in its entirety.
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Concurring Arbitrator's Signature

Name



Peter D. Forbes

Public/Industry

Industry Arbitrator

Date of Decision: June 9, 1992

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Concurring Arbitrator's Signature
Name



Lipman Reckman

Public/Industry

Public Arbitrator

Date of Decision: June 9, 1992