

## 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 Between

Name of Claimant

William Garner

91-03078

Name of Respondents

Prudential Securities Inc  
Robert L. Gorman

REPRESENTATION

For Claimant William Garner ("Claimant"): Kevin R. McDermott, of Schottenstein, Zox et al.

For Respondents Prudential Securities, Inc. ("PSI") and Robert L. Gorman ("Gorman"): Dennis J. Concilla, of Carlile Patchen et al.

CASE INFORMATION

Statement of Claim filed: October 1, 1991.

Claimant's Submission Agreement signed on: September 30, 1992.

Joint Statement of Answer filed by Respondents on: December 6, 1991.

Respondent PSI's Submission Agreement signed on: July 22, 1992.

Respondent Gorman's Submission Agreement signed on: June 25, 1992.

HEARING INFORMATION

Pre-Hearing Conference:                      October 22, 1992/1 session/1 arbitrator  
November 13, 1992/1 session/1 arbitrator

Hearing Dates/Sessions:                      November 18, 1992/2 sessions  
November 19, 1992/2 sessions  
December 14, 1992/2 sessions  
December 15, 1992/2 sessions  
February 15, 1993/2 sessions

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Hearing Location: Columbus, OH.

### CASE SUMMARY

Claimant alleged Gorman recommended he liquidate his positions in Control Resources which, he alleged, caused him to suffer financial losses. Claimant alleged Gorman advised him he had access to many sources of information and that he would be able to use his contacts and sources for Claimant's benefit. Claimant alleged Gorman began trading stocks in Claimant's account in order to recoup the Control Resources' losses. Claimant alleged Gorman then recommended options trading as a less risky way to recoup his losses. Claimant alleged Gorman indicated that the account would be managed by options "experts". Claimant alleged Gorman asserted de facto control over his account and engaged in a large number of transactions involving speculation and unsuitable stocks and options. Claimant further alleged Gorman made unauthorized transactions in his account. Finally, Claimant alleged PSI failed to supervise Gorman's conduct and ratified and encouraged his conduct in order to generate commission income.

Respondents alleged Gorman and Claimant spoke several times to discuss the Control Resources investment after Gorman recommended Claimant sell his positions and that Gorman's advice resulted in a smaller loss than had Claimant not sold the stock. Respondents maintained Claimant was interested in a aggressive strategy that would allow him to better leverage the securities in his account to produce greater income to offset his tax-loss carry forward. Gorman asserted he recommended the use of options, whereby Claimant executed an Option Agreement. Respondents alleged Claimant spoke with an Options Analyst for PSI over the next few months regarding strategy to be employed in his account. Finally, Respondents asserted Claimant expressed an understanding of options strategies and the risks he was undertaking.

### RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$385,000.00; punitive damages; costs; pre-judgment interest; attorneys' fees; and expert fees.

Respondents requested: Claimant's demand for relief be dismissed in its entirety; and costs.

### 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.

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**AWARD**

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

1. The claims of Claimant William Garner are dismissed;
2. All other claims are dismissed;
3. Each party shall bear its own expenses, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee and the following Forum Fees are assessed.

2 pre-hearing conference sessions = net \$600.00 due.

12 hearing sessions X \$750.00 = \$9,000.00 minus hearing session deposit of \$750.00 = net \$8,250.00 due.

**Forum fees Assessed Against:**

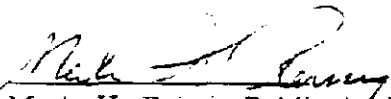
1. Claimant William Garner is hereby liable in the amount of \$2,000.00. The NASD shall retain Claimant's hearing session deposit of \$750.00; therefore, the amount due and owing the NASD equals \$1,250.00;
2. Respondents Prudential Securities, Inc. and Robert L. Gorman are hereby liable, jointly and severally, in the amount of \$7,600.00. Therefore, the amount due and owing the NASD equals \$7,600.00.

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

Arbitrator Signature



Merle H. Reissig/Public Arbitrator

Date of Decision: March 23, 1993

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Arbitrator Signature

*Bertha A. Richardson*

Bertha A. Richardson/Industry Arbitrator

Date of Decision: March 23, 1993

**IASA**

## Arbitration

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Arbitrator Signature



Andrew M. Temin/Public Arbitrator

Date of Decision: March 23, 1993