

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Guy P. Wyser-Pratt

vs.

Case # 91-03453

Name of Respondents

Prudential Securities, Inc.
Prudential Insurance Company

REPRESENTATION

For Claimant, Guy P. Wyser-Pratt ("Claimant"), Michael J. Dell, Esq. from the law firm of Kramer, Levin, Nessen, Kamin & Frankel.

For Respondent, Prudential Securities, Inc. ("PSI") and Prudential Insurance Company ("PIC"), Ronald M. Green, Esq. from the law firm Epstein Becker & Green, P.C.

CASE INFORMATION

Statement of Claim was filed on November 4, 1991.
Claimant's Submission Agreement was signed on October 29, 1991.
Amended Statement of Claim was filed on May 18, 1993.
Motion to Preclude Answer was filed on February 13, 1992.

Joint Statement of Answer was filed by PSI and PIC on May 29, 1992.
PSI's Submission Agreement was signed on May 3, 1993.
PIC did not sign a Submission Agreement.
Joint Answer to Amended Statement of Claim was filed on May 28, 1993.

Stipulation Consolidating New York Stock Exchange and National Association of Securities Dealers, Inc. arbitration proceeding was filed on May 26, 1992.

HEARING INFORMATION

Pre-Hearing Conferences:	May 14, 1992	-	1 session
	June 17, 1993	-	1 session
	July 15, 1993	-	1 session

Hearing Dates/Sessions:	March 2, 1993	-	2 sessions
	March 3, 1993	-	2 sessions
	March 4, 1993	-	2 sessions
	May 17, 1993	-	2 sessions
	May 18, 1993	-	2 sessions
	May 19, 1993	-	2 sessions
	May 25, 1993	-	1 session
	June 8, 1993	-	2 sessions
	June 9, 1993	-	2 sessions
	June 10, 1993	-	2 sessions
	June 23, 1993	-	2 sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleges that between 1967 and December 4, 1990, he was employed by Prudential-Bache Securities, Inc. ("Prudential-Bache"), now known as PSI, and that for the last nineteen of those years, he served as head of Prudential-Bache Risk Arbitrage Department ("Department"). Claimant alleges that during his tenure as head of the Risk Arbitrage, his compensation was established pursuant to a written agreement but that after December 31, 1985, pursuant to an oral agreement kept confidential at Prudential-Bache's request and confirmed in numerous written memoranda by the parties. Claimant also alleges that since 1985, each agreement provided that it would be automatically extended from year to year unless canceled by written notice by either party prior to November 30. Claimant also alleges that the agreement provided that Prudential-Bache would "not impose any restriction or limitations which would prevent or substantially impair the continuation of arbitrage activities by Claimant."

Claimant further alleges that PIC wrongfully induced Prudential-Bache to (1) breach its agreement with Claimant by dramatically reducing the amount of capital available to continue Claimant's arbitrage activities from \$375 million to \$25 million; (2) misrepresent that the company intended to continue with Claimant's department; (3) terminate wrongfully Claimant's employment agreement on December 4, 1990 even though had just been automatically renewed for 1991.

Claimant alleges that as a result of these breaches a) the Department was compelled to incur losses; b) he was prevented from making investments which would have yielded the Department profits; and c) he was prevented from obtaining alternative employment and business opportunities he might have obtained prior to his termination. Claimant contends that another year of employment would have entitled him to benefits under Prudential-Bache's various employee benefit plans, contributions from various pension plans, health, life and disability insurance benefits.

Claimant contends that from fiscal year 1968 through December 31, 1989, his department generated in excess of \$319 million in gross trading profits and commissions with a net profit in excess of \$202 million, while the rest of the firm incurred a net loss in excess of \$133 million during that period.

After a pre-hearing conference in the matter, PSI and PIC filed their answer. PIC contends that it was not aware of any employment contract, written or oral, between Claimant and PSI. Respondents state that even assuming that PIC as prime owner of PSI terminated the Department, its actions were justified. Respondents argues that Claimant's claim against PIC should be dismissed because PIC is not a member of the NASD and there is no employer-employee relationship between Claimant and PIC.

PSI denies that it engaged in any unlawful conduct and maintains that Claimant's last employment agreement was expressly terminated in November, 1985 and was not renewed, revised or extended. PSI contends that as a result of mounting losses during 1987 through 1990, it made the decision to close the Department as part of its overall strategic decision to curtail losing operations and to redirect its business focus to its original core business of retail brokerage activities. PSI also alleges that in 1990, its cumulative losses totalled \$250 million with \$70 million attributable to Risk Arbitrage trading activities managed and controlled by Claimant. PSI also alleges that as part of this strategic decision, it contracted and closed certain of its core businesses, including the wholesale reduction in investment banking and the closing of Canadian operations.

RELIEF REQUESTED

Claimant requests an award of in excess of \$10 million, punitive damages in excess of \$5 million, interest, arbitration fees and expenses in this matter, costs and attorney's fees, and such other and further relief as the panel deems proper.

Respondents request that the claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

All claims against Prudential Insurance Company are dismissed.

As to the claims against Prudential Securities Inc., it shall pay Claimant as follows:

- a) **TWO HUNDRED FORTY THOUSAND DOLLARS** plus interest at the rate of 9% per annum from January 1, 1991 to date of the award;
- b) **NINETY THOUSAND EIGHT HUNDRED THIRTY DOLLARS** plus interest at the rate of 9% per annum from January 1, 1991 to the date of the award; and
- c) attorneys' fees of **TWO HUNDRED FIFTY THOUSAND DOLLARS** due to the egregiously improper manner in which PSI defended itself in this proceeding.

In all other respects, Claimant's claims are dismissed.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against the PSI.

Non-refundable Filing Fee: \$500.00

Hearing Session Fees: \$1,500.00 x 21 sessions = \$31,500.00

Pre-hearing Conferences: \$300.00 x 3 sessions = \$900.00

- 1) PSI was also sanctioned and assessed \$1,000.00 for failure to comply with this Panel's order of production of documents to Claimant.

Award 91-03453

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- 2) PSI obtained a postponement of the hearing that was scheduled for May 26, 1993 and was assessed a fee of \$1,500.00 which has been paid.
- 3) Claimant deposited \$2,000.00 and is entitled to a refund in that amount.
- 4) PSI shall satisfy the assessment by reimbursing Claimant \$2,000.00 and by remitting the balance of \$30,900.00 to the NASD.

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

ARBITRATION PANEL

Michael J. McAllister, Esq.	-	Industry Chairperson
Alan Jaffee	-	Industry Panelist
Terri L. Weiss, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature
Name

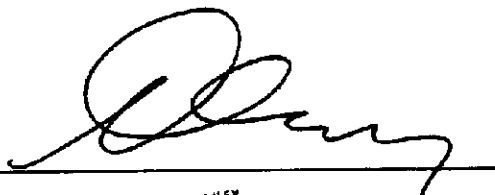

Alan Jaffee

Date of Decision: December 21, 1993

STATE OF NEW YORK
COUNTY OF *NY*.

S.S.:

On this *16th* day of December, 1993, before me personally appeared Alan Jaffee 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.



VALERIE I. BAILEY
NOTARY PUBLIC, State of New York
No. 24-4940303
Qualified in Kings County
Commission Expires July 18, 199 *4*


- 2) PSI obtained a postponement of the hearing that was scheduled for May 26, 1993 and was assessed a fee of \$1,500.00 which has been paid.
- 3) Claimant deposited \$2,000.00 and is entitled to a refund in that amount.
- 4) PSI shall satisfy the assessment by reimbursing Claimant \$2,000.00 and by remitting the balance of \$30,900.00 to the NASD.

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

ARBITRATION PANEL

Michael J. McAllister, Esq.	-	Industry Chairperson
Alan Jaffee	-	Industry Panelist
Terri L. Weiss, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature
Name


Michael J. McAllister, Esq.

Date of Decision: December 21, 1993

STATE OF NEW YORK
COUNTY OF *New York*

S.S.:

On this *14th* day of December, 1993, before me personally appeared Michael J. McAllister 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.

Eloise D. Cunnane

ELOISE D. CUNNANE
Notary Public, State of New York
No. 24-4882775
Qualified in Kings County
Commission Expires Jan. 12, 1994 *g*


- 2) PSI obtained a postponement of the hearing that was scheduled for May 26, 1993 and was assessed a fee of \$1,500.00 which has been paid.
- 3) Claimant deposited \$2,000.00 and is entitled to a refund in that amount.
- 4) PSI shall satisfy the assessment by reimbursing Claimant \$2,000.00 and by remitting the balance of \$30,900.00 to the NASD.

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

ARBITRATION PANEL

Michael J. McAllister, Esq.	-	Industry Chairperson
Alan Jaffee	-	Industry Panelist
Terri L. Weiss, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature
Name


Terri L. Weiss, Esq.

Date of Decision: December 21, 1993

STATE OF NEW YORK
COUNTY OF WESTCHESTER

S.S.:

On this 13th day of December, 1993, before me personally appeared Terry L. Weiss 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.

James M. Marino

JAMES M. MARINO
Notary Public, State of New York
No. 4932153
Qualified in Westchester County
Commission Expires May 2, 1994