

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

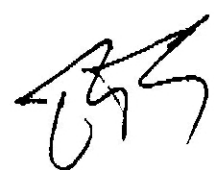
Name of Claimants

Warren C. DeLano TTEE Warren C. DeLano
Warren C. & Elaine DeLano

91-04008

Name of Respondents

Prudential Securities Inc
Robert Buescher



REPRESENTATION

For Claimants Warren C. DeLano, TTEE and Warren and Elaine DeLano ("Claimants") appeared Gregory D. Seeley, Esq. and Carter Dodge, Esq. of Seeley Savidge & Aussem located in Cleveland, Ohio.

For Respondents Prudential Securities, Inc. and Robert Buescher ("Respondents") appeared Anthony J. Hartman, Esq. of Hermann, Cahn & Schneider of Cleveland, Ohio.

CASE INFORMATION

Statement of Claim was filed on December 16, 1991.

Claimants' Submission Agreement was signed on January 10, 1992.

Joint Statement of Answer filed by Respondents on July 2, 1992.

Respondents Prudential Securities, Inc. and Robert Buescher did not execute submission agreements.

HEARING INFORMATION

| | | |
|-------------------------|----------------|----------------|
| Hearing Dates/Sessions: | March 11, 1993 | Two Sessions |
| | June 7, 1994 | Two Sessions |
| | June 8, 1994 | Three Sessions |

The hearing was conducted at the National Association of Securities Dealers, Inc.

offices located in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that they maintained accounts with the Cleveland office of Prudential Securities, starting in the fall of 1987; that the accounts were opened and placed under the supervision and management of the registered representative of Prudential Securities, Robert Buescher, throughout the time of the alleged wrongdoing; and that respondents jointly and severally managed claimants' accounts and advised claimants on investment opportunities.

Claimants also alleged that Respondents were aware of the claimants' need to protect and preserve principal while reinvesting interest with the intention of being able to draw 8% when he retired; that to reach this goal claimants' needed conservative, income-producing investments that had little volatility or risk to principal; and that Respondents turned investments that should have achieved claimants' goals into short term trading vehicles, generating lost principal and excessive commissions, as well as margin interest.

Claimants additionally alleged that Respondents engaged in a combination of unsuitable and excessive trades, unauthorized trades, unsuitable use of margin, and unsuitable investment recommendations resulting in the generation of excessive commissions, excessive margin interest that allegedly negated the income earned in Claimants' account and heavy loss of principal due to the excessive trading of certain investments and inappropriate and unsuitable investments in certain limited partnerships.

Claimants' further alleged that in an effort to cover up the allegedly wrongful trading undertaken in the account of Claimant Warren Delano, Respondents forged claimant Warren Delano's signature in a margin agreement dated October 19, 1988.

Respondents denied all allegations of wrongdoing asserted against them, maintaining that the purchases Respondents recommended were suitable for the Claimants' objectives; that Claimants authorized and understood the investment strategies behind these purchases; and that claimants received a prospectus in connection with each of the above purchases, which fully disclosed all material facts and risks relative to these investments.

Respondents further denied Claimants' allegations of forgery, stating that Claimant Warren C. DeLano's allegedly forged signature matches other samples of Claimant Delano's signature.

Respondents also maintained that the statement of claim fails to state a claim for relief or to state any facts that support the claims set forth therein; that there exists no known cause of action for alleged breach of trust; that there is no

express or implied private right of action for alleged violations of NASD Rules; and that claimants have neither pled, nor can they prove, the elements of a claim for alleged breach of contract.

RELIEF REQUESTED

Claimants requested that an award be issued in their favor against Respondents, jointly and severally, in the amount of One Million Three Hundred Thirty-Five Thousand Five Hundred Dollars (\$1,335,500.00), computed as follows:

- (a) \$55,000.00 in damages for the purchase of limited partnerships which are worthless;
- (b) \$110,500.00 in damages for unauthorized margin trading to date;
- (c) \$50,000.00 (estimated) in damages of excessive commissions to respondents caused by their churning activity;
- (d) \$60,000.00 in damages representing the loss of principal in claimants' account caused by respondents' unauthorized activity;
- (e) \$60,000.00 (estimated) in damages for loss of normal equity growth in Claimants' account;
- (f) \$500,000.00 in damages for forging claimant Warren Delano's signature to "cover-up" the wrongdoing;
- (g) \$500,000.00 as punitive or exemplary damages for the breach of fiduciary duty owed to claimants, and for the intentional nature of the churning, margin creation, and forgery;
- (h) All other costs, expenses and other relief which the arbitrators deem appropriate in this case.

Respondents requested that the Statement of Claim be dismissed in its entirety and that such other and further relief be awarded as the Panel deems just and proper.

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.

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. Respondents be and hereby are jointly and severally liable and shall pay to the Claimants the sum of \$138,821.00.
2. All claims for punitive damages be and hereby are denied.
3. Respondents motions to dismiss are denied.
4. All other claims against the Respondents be and hereby are denied.
5. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

7 sessions X \$1000 = \$7,000 minus hearing session deposit of 1000 = net \$6,000.00 due.

Forum fees in the amount of \$6,000.00 are assessed Against Respondents, jointly and severally.

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

Concurring Arbitrators' Signatures

Name



Thomas C. Wagner, Esq.
Chairperson - Public Arbitrator

Jay S. Perrier
Industry Arbitrator

Date of Decision: August 1, 1994

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:

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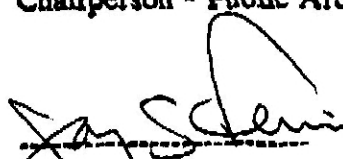
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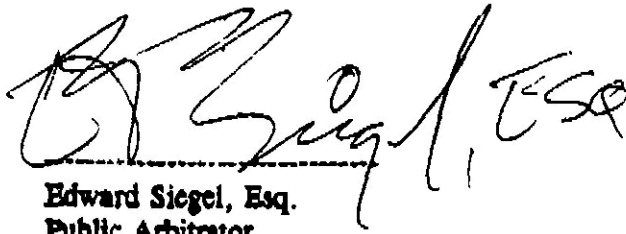
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Name

Thomas C. Wagner, Esq.
Chairperson - Public Arbitrator




Jay S. Ferrier
Industry Arbitrator

Date of Decision: August 1, 1994

Handwritten signature of Edward Siegel, Esq. in cursive script, with the letters 'ESQ' written in a more formal, blocky style at the end of the signature.

Edward Siegel, Esq.
Public Arbitrator

Handwritten initials or mark, possibly 'ES' or 'AS', in a stylized cursive script.

Date of Decision: August 1, 1994