

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ben Turnage and Roxco, Ltd.

91-04058

Name of Respondents

Prudential Securities Incorporated;
Garry Lauman

REPRESENTATION

For Claimants: Ben Turnage and Roxco, Ltd. were represented by Clifton Hodge, Esq. and W. Robert Jones, III, Esq. of Phelps Dunbar, located in Jackson, Mississippi.

For Respondents: Prudential Securities Incorporated and Garry Lauman were represented by Alan W. Perry, Esq. of Foxman, Perry, Watkins & Krutz, located in Jackson, Mississippi.

CASE INFORMATION

Statement of Claim filed on: December 23, 1991.

Claimant Ben Turnage's Submission Agreement signed on: December 19, 1991.

Claimant Roxco, Ltd.'s Submission Agreement signed on: December 19, 1991 by Ben Turnage as President, Roxco, Ltd.

Joint Statement of Answer filed by Respondents Prudential Securities Incorporated and Garry Lauman on: February 13, 1992.

Respondents Prudential Securities Incorporated and Garry Lauman did not file executed Submission Agreements, but answered, appeared and testified at the hearing, are a member or an associated person and are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: July 15, 1992 for two (2) sessions
July 16, 1992 for two (2) sessions
July 17, 1992 for two (2) sessions

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimants Ben Turnage and Romco, Ltd. ("Turnage") alleged that the Respondent Gerry Lauman ("Lauman"), while employed by or acting as the agent for the Respondent Prudential Securities Incorporated ("Prudential") recommended unsuitable, speculative securities such as Mtel and First Executive Life G. Turnage specifically alleged as follows:

1. Turnage expressed to Lauman at their initial meeting on or about May 3, 1990 a desire to learn about the stock market through hands-on experience and informed Lauman that he had no prior investment experience and could afford to lose a maximum of \$15,000.00 to \$20,000.00 in the market;
2. Turnage, who had no prior knowledge of Mtel, purchased 3,000 shares of Mtel and 1,000 shares of Trustmark at Lauman's urging. Based on Lauman's continuing recommendations of Mtel and advice, Turnage purchased more shares of Mtel and continued buying and selling various speculative stocks, including 5,000 shares of First Executive Life Preferred G;
3. Turnage received margin calls due to the decline in value of the stocks in June of 1990 and alleged that Lauman did not explain the concept of margin calls;
4. Turnage alleged that he purchased two options contracts on October 29, 1990 and purchased additional shares of Mtel based on Lauman's advice to make up losses;
5. On December 31, 1990, Turnage sold his First Executive and Trustmark stock and on January 7, 1991, he began liquidating his Mtel holdings.

Turnage further alleged that the following additional facts support his claims: Lauman's encouragement to purchase large blocks of speculative, low priced securities without explanation of risks; Lauman's encouragement to purchase securities through a margin account without explanation of margin calls, encouragement, or alternatively, his failure to advise Turnage against accumulating extraordinarily large blocks of stocks disproportionate to the remainder of the portfolio; Lauman's recommendation to Turnage, a novice investor with six months experience, to engage in options trading and recommendation to trade large blocks of U.S. Treasury strips.

Based on the above allegations, Turnage asserted claims for breach of fiduciary duty; violation of Section 10 of the Securities and Exchange Act of 1934, SEC Rule 10b-5 and Miss. Code Ann. Section 75-71-501; negligence; and violation of Article III, Section of the NASD Rules of Fair Practice. Respondent Prudential's liability was alleged pursuant to the theory of Respondeat Superior and for violation of Section 20(a) of the Securities Exchange Act of 1934.

Respondents Prudential and Laumen denied the material allegations of the Statement of Claim, alleging that:

1. The Claim contains misstatements and factual distortions and conveys little, if any, of the actual history of the account and Turnage's interactions with Laumen;
2. Laumen's initial contact with Turnage came not as the result of any sales tactics by Laumen, but, rather, as the result of Turnage's own strong desire to invest in the market;
3. During the initial meeting with Laumen, Turnage was anxious to learn about Mtel stock, which was the same stock Turnage's girlfriend, who was a client of Laumen's, had discussed with Laumen in the Spring of 1990;
4. Turnage did not set a loss limit of \$15,000.00 to \$20,000.00 but that amount was the total sum Turnage originally stated he wanted to invest;
5. Laumen, who was anxious to give Turnage only accurate information, described Mtel as a "good, long-term, speculative" security and the decision to purchase the initial 3,000 shares was Turnage's;
6. Turnage's purchases of Mtel never occurred without his knowledge, permission or informed consent and he was supplied with Mtel sales literature, quarterly and annual reports, prospectus-like information, account statements and trade confirmations. On more than one occasion, Turnage expressed his desire to own 100,000 shares of Mtel;
7. It was Turnage's sole decision to sell the Mtel stock which has more than doubled from the price at which Turnage sold it;
8. Several of the stocks purchased by Turnage were never heard of by Laumen and were brought to the attention of Laumen by Turnage and were purchased at Turnage's insistence; and
9. The concept of options as a possible investment strategy was first raised by Turnage, whereupon Laumen suggested buying puts to Turnage, based on the Prudential's belief that several stocks were going to suffer a decline in price and as a recognized investment strategy in an attempt to earn back losses. Turnage executed the Options Client Agreement Form and the documentation specifically authorizing the purchases of the puts.

RELIEF REQUESTED

Claimant Ben Turnage requested an entry of an Award against the Respondents Prudential Securities Incorporated and Gerry Lauman in the sum of \$436,000.00 in actual damages; interest from the time of the investments at the maximum rate permitted by law; reasonable attorneys' fees and costs of the arbitration. Claimant Rocco, Ltd. requested an entry of an award against the Respondents Prudential Securities Incorporated and Gerry Lauman, joint and severally, in the amount of \$103,343.76 in compensatory damages; interest from the time of the transactions at the maximum rate permitted by law; reasonable attorneys' fees and costs of the arbitration.

Respondents Prudential Securities Incorporated and Gerry Lauman requested that the Statement of Claim be denied*in its entirety and that all costs and expenses of the arbitration to be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Prudential Securities Incorporated and Gerry Lauman did not file a properly executed Submission Agreement. The panel specifically finds that Respondents Prudential Securities Incorporated and Gerry Lauman are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

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 original remains 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 Prudential Securities Incorporated and Gerry Lauman are jointly and severally liable for and shall pay to Claimants Ben Turnage and Rocco, Ltd. the sum of \$293,539.00 plus simple interest at the rate of 8% per annum from July 18, 1992 until said award is paid in full; and
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

OTHER COSTS

The National Association of Securities Dealers, Inc. shall retain the adjournment fee of \$1,000.00 previously deposited by Respondent Prudential Securities Incorporated.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Six (6) sessions x \$1,000.00 = \$6,000.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$1,000.00 previously deposited by the Claimants Ben Turnage and Rowe, Ltd. Respondents Prudential Securities Incorporated and Gerry Laumen are jointly and severally liable for and shall pay to the NASD the sum of \$6,000.00 as forum fees.

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

CONCURRING ARBITRATORS' SIGNATURES

Dated:

Daniel Eugene Sivens, III
Daniel Eugene Sivens, III
Public Arbitrator
Chairperson

September 21, 1992

Clayton J. Borne, III, Esq
Clayton J. Borne, III, Esq.
Public Arbitrator

September 23, 1992

Alice I. Hughes
Alice I. Hughes
Industry Arbitrator

September 23, 1992

Date of Service on Parties: 9-28-92