

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Joseph Neiman

vs.

Case #  
91-04111

Name of Respondents

Prudential Securities Inc  
Jay Tittlebaum

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**REPRESENTATION**

Claimant, Joseph Neiman ("Claimant") was not represented by counsel.

For Respondents, Prudential Securities, Inc. ("Prudential") and Jay Tittlebaum ("Tittlebaum"), Anthony Paduano, Esq., from the law firm of Smith Campbell & Paduano.

**CASE INFORMATION**

Statement of Claim was filed on December 27, 1991.

Claimant's Submission Agreement was signed on December 26, 1991.

Joint Statement of Answer was filed by Respondents on April 21, 1992.

Prudential's Submission Agreement was signed on February 19, 1993.

Tittlebaum's Submission Agreement was signed on February 22, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: January 4, 1993 - 1 session

Hearing Dates/Sessions: January 7, 1993 - 2 sessions  
February 22, 1993 - 1 session  
June 3, 1993 - 2 sessions  
June 8, 1993 - 2 sessions  
July 29, 1993 - 2 sessions  
August 10, 1993 - 1 session  
November 18, 1993 - 1 session

Hearing Location: NASD offices located at 33 Whitehall Street, New York, NY.

### CASE SUMMARY

Claimant alleges that based upon Respondent Tittlebaum's statement that he had successfully invested in short-term trading vehicles for other clients, Claimant transferred his IRA to Prudential. Claimant alleges that he informed Tittlebaum that his investment objectives were short term investments, maximum 3 to 6 months, in merges and/or acquisitions with a 20% gain with 60 days and that stop loss orders must be in position at 10% at all times. Claimant also alleges that he informed Tittlebaum that he was not interested in oil or real estate issues, cyclical or economically sensitive stocks and high risk or options vehicles. Claimant states that Tittlebaum initially followed his instructions but later purchased Conquest Exploration Warrants in contravention of his investment objectives. Claimant also states that Tittlebaum stated that this investment would triple in value the next week. Claimant also alleges that he instructed Tittlebaum to liquidate the account but by the time the account was liquidated, he lost \$38,000.00. Claimant further alleges that Tittlebaum without authorization purchased In General Homes and M. Corp.

Respondents generally and specifically deny each and every allegation in the Statement of Claim and assert nine affirmative defenses.

Respondents maintain that based upon Claimant's primary investment objective of speculation and stock trading, Tittlebaum recommended the purchases of Foothill Group, Conquest Exploration Warrants, General Homes and M Group. Respondents also maintain that the investments and their risks were clearly discussed with Claimant. Respondent deny that a special fiduciary relationship existed between Claimant and Tittlebaum. Respondent maintain that this was not a discretionary account and Claimant was in complete control of his account. Respondents contend that the claims are time-barred pursuant to Section 12(2) of the Securities Act of 1933 or Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-15 promulgated thereunder.

### RELIEF REQUESTED

Claimant requests an award of \$38,000 plus interest and lost earnings, treble damages for falsehood, fraud and violations of SEC and NASD regulations.

Respondents request that the claim be dismissed in its entirety and that costs be awarded in their favor.

### **OTHER ISSUES CONSIDERED & DECIDED**

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

The parties were asked to submit post-hearings briefs on December 7, 1993. The NASD has advised this panel that *no briefs have been filed by either party and that counsel for Respondent informed the NASD that the tapes for the first hearing dates were blank.*

### **AWARD**

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

1. Respondents are jointly and severally liable to Claimant and shall pay Claimant **SIXTEEN THOUSAND THREE HUNDRED AND EIGHTY FIVE DOLLARS AND NINETEEN CENTS** (\$16,385.19), which amount includes interest.
2. All other claim for relief is denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed and shall be borne equally by the parties.

Non-refundable Filing Fee: \$200.00.

Hearing Session Fees: \$750.00 x 11 sessions = \$8,250.00.

Pre-Hearing Conference Fees: \$300.00 x 1 session = \$300.00.

Total Fees: \$8,750.00.

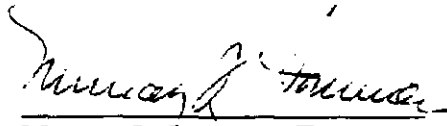
1. Claimant is assessed \$4,375.00. Claimant previously paid \$950.00 and owes a balance of \$3,425.00.
2. Prudential and Tittlebaum are jointly and severally assessed \$4,375.00.
3. Prudential is further assessed \$750.00 for postponement of the hearing that was scheduled for August 31, 1992, which has been paid.

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

ARBITRATION PANEL

Murray I. Sommer, Esq.	-	Public Chairperson
Richard L. Jones, Esq.	-	Public Panelist
James J. Noone	-	Industry Panelist

Concurring Arbitrator's Signature

  
Murray I. Sommer, Esq.

Date of Decision: April 6, 1994

STATE OF New York s.s.:  
COUNTY OF New York


On this 30<sup>th</sup> day of March, 1994, before me personally appeared Murray Sommer 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.

  
**KEVIN L. COOK**  
SHERIFF POLICE, STATE OF NEW YORK  
NO. REC0008105  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES NOV. 30, 1995

ARBITRATION PANEL

Murray I. Sommer, Esq.	-	Public Chairperson
Richard L. Jones, Esq.	-	Public Panelist
James J. Noone	-	Industry Panelist

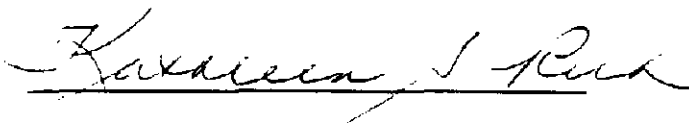
Concurring Arbitrator's Signature

  
James J. Noone

Date of Decision: April 6, 1994

STATE OF  S.S.:  
COUNTY OF 

On this      day of March, 1994, before me personally appeared James J. Noone 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.

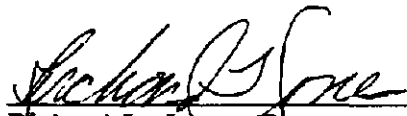


KATHLEEN S. RUH  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES  
JAN. 16 1996

ARBITRATION PANEL

Murray I. Sommer, Esq.	-	Public Chairperson
Richard L. Jones, Esq.	-	Public Panelist
James J. Noone	-	Industry Panelist

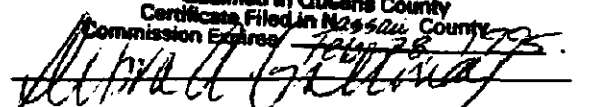
Concurring Arbitrator's Signature

  
Richard L. Jones, Esq.

Date of Decision: April 6, 1994

STATE OF *NEW YORK* s.s.:  
COUNTY OF *NEW YORK*

On this *7* day of *April*, 1994, before me personally appeared Richard L. Jones 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.

DEBRA A. GALLOWAY  
Notary Public, State of New York  
No. 41-4815882  
Qualified in Queens County  
Certificate Filed in Nassau County  
Commission Expires *Jan 78*  
  
DEBRA A. GALLOWAY, Esq.