

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Saul Berg

92-00114

Name of Respondents

Prudential Securities Inc  
James Manetta

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**REPRESENTATION**

For Claimant: Peter B. Skeel, Esq. of Swensen Perer & Johnson.

For Respondent: Foster S. Goldman, Jr., Esq. of Klett Lieber Rooney & Schorling.

**CASE INFORMATION**

Statement of Claim filed: January 13, 1992.

Claimant's Submission Agreement signed on: February 3, 1992.

Joint Statement of Answer filed by Respondents Prudential Bache Securities and Jim Manetta on: April 7, 1992.

Respondent Prudential Bache's Submission Agreement signed on: August 25, 1992.

Respondent Jim Manetta's Submission Agreement signed on: April 8, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions: November 10, 1992. 2 Sessions.

Hearing Location: Ramada Inn Downtown in Pittsburgh, PA.

### **CASE SUMMARY**

Claimant alleged that Respondents violated their fiduciary duty to Claimant: failed to provide investment advice that was prudent to Claimant; failed to supervise Claimant's account and Respondents violated Claimant's investment objectives. Claimant further alleged that in December 1989 or January 1990 Claimant received a call from Respondent Jim Manetta, where Jim Manetta advised Claimant that he believed Claimant accused him of churning and was thus harming his business, which Claimant denied; thereafter, Respondent Jim Manetta refused to converse with Claimant. Claimant further alleged that when he repeatedly attempted to contact Respondent Prudential Bache Securities to insure someone was handling his account, he either received no response or was advised that in the interim, nothing was done with the accounts which caused losses as a result of the inactivity.

Respondents maintained that Claimant is a very sophisticated investor with many years of investment experience. Respondents further maintained at some point Claimant underwent a major character change where he harassed Respondent Jim Manetta's family and finally Respondent Jim Manetta decided to give up Claimant's account and definitely communicated this to Claimant. Respondents further maintained that the branch manager set up interviews with other financial advisors in order for Claimant to chose one, and there was ample opportunity for Claimant to monitor the account, direct any transactions or even transfer the account. Respondents asserted the following defenses: statute of limitations, waiver, estoppel, ratification and failure to state a claim.

### **RELIEF REQUESTED**

Claimant requested \$48,790.04 in compensatory damages, interest, costs, expenses, attorneys' fees and punitive damages.

Respondents requested all claims be dismissed in their entirety and all attorneys' fees and costs be reimbursed.

### **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-Bache and Jim Manetta, be and hereby are liable, jointly and severally, and shall pay Claimant the sum of \$29,000.00 inclusive of interest.
2. The Claimants request for punitive damages is denied.



3. Respondent Prudential Bache and Jim Manetta be and hereby shall be liable, jointly and severally, and shall pay Claimant the sum of \$520.00 to represent fees previously deposited by Claimant.
4. Each party shall bear their own costs including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.


2 sessions X \$400.00 = \$800.00 less \$400.00 hearing session  
deposit = \$400.00 due.

Respondent Prudential Bache and Jim Manetta be and hereby shall be liable, jointly and severally, and shall pay the NASD the sum of \$400.00 to represent forum fees.

The NASD shall retain the \$120.00 filing fee and \$400.00 hearing session deposit previously deposited by Claimant.

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

**ARBITRATOR SIGNATURE**

  
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Dennis R. Shannon,  
Industry Arbitrator

Date of Decision: December 1, 1992



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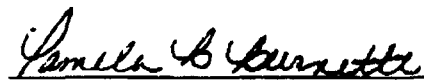
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**ARBITRATOR SIGNATURE**



Pamela B. Burnette  
Public Arbitrator

Date of Decision: December 1, 1992



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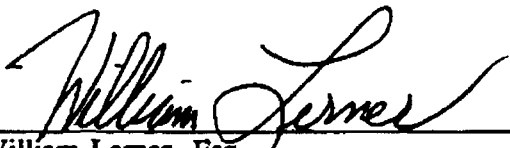
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**ARBITRATOR SIGNATURE**

  
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William Lerner, Esq.

Date of Decision: December 1, 1992



