

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Johnnie R. Flowers

92-00970

Name of Respondent(s)

Prudential Securities Inc

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**REPRESENTATION**

For Claimant Johnnie R. Flowers, Jr.: Montgomery Knight, Esq., of Knight Dudley Dezern & Clarke of Norfolk, Virginia.

For Respondent Prudential Securities, Inc.: Marc Dobin, Esq. of Casey Cilkin Lubitz Martens McBane and O'Connell, of West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed: March 16, 1992.

Claimant's Submission Agreement signed on: March 12, 1992.

Statement of Answer filed by Respondent Prudential Securities, Inc. on: May 20, 1992.

Respondent Prudential Securities, Inc.'s Submission Agreement on: May 19, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions:      October 4, 1993 / Two Sessions  
   October 5, 1993 / Two Sessions  
   October 6, 1993 / Two Sessions  
   October 7, 1993 / Two Sessions

Hearing Location:      Omni Hotel in Norfolk, Virginia.

### CASE SUMMARY

Claimant alleged that in 1989 he received a lump sum of retirement funds of \$900,000.00 and was to receive \$100,000.00 in 1990 and wished to invest the funds. Claimant alleged that he spoke with Richard Eckhardt, a Vice President and broker with Respondent Prudential Securities, Inc. and stressed to Respondent and its agents that he had no other liquid assets and that once he retired he would have no other source of income not even social security, whereby, his number one priority was "99.9%" safety and security. Claimant contended that he advised Respondent that he would require \$7,000.00 per month from his account for living expenses. Claimant alleged that later at a conference with agents of Respondent he received various brochures and materials which Claimant did not understand; however, Messrs. Eckhardt and Dudas of Respondent Prudential were very persuasive and assured Claimant of their expertise and conveyed the false impression that there would be a three person team overseeing the management of Claimant's funds. Claimant further alleged that no one ever told him that Mr. Dudas, alone and unsupervised, would be handling the account. Claimant then transferred his funds to Respondent who imprudently invested the monies, breached contracts, securities laws, regulations, and breached fiduciary duties owed to Claimant. Claimant further alleged that Respondent misrepresented and failed to disclose material facts, made excessive trades, failed to supervise Claimant's account, failed to provide suitable investments and failed to properly inform Claimant of the risks involved. Claimant contended that Respondent's actions resulted in substantial unauthorized trading losses and lost investment opportunity.

Respondent maintained that Respondent suggested that Claimant open a Command IRA and liquidate mutual fund shares, as needed, to fund check-writing which was explained to Claimant and he understood it. Respondent maintained that the Claimant is barred from bringing this action by the applicable statute of limitations, laches, unclean hands, ratification. Respondent further maintained that the risks concerned in purchasing and selling the investments were fully explained to Claimant and he knowingly willingly and voluntarily assumed the risks in investing in the market.

### RELIEF REQUESTED

Claimant requested \$359,873.94 plus attorneys' fees, costs and pre-judgement interest.

Respondents requested all claims be dismissed.

**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. Respondent Prudential Securities, Inc. be and hereby is liable and shall pay Claimant the sum of \$51,725.19 inclusive of interest.
2. 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 Fees are assessed:

8 sessions x \$750.00 = \$6,000.00 less \$750.00 hearing session  
deposit = \$5,250.00 net due.

Forum Fees Assessed Against:

Respondent Prudential be and hereby is liable and shall pay the NASD the sum of \$3,100.00 to represent forum fees.

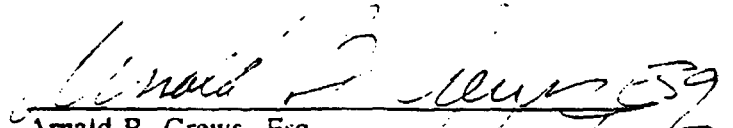
Claimant Johnnie R. Flowers, Jr. be and hereby is liable and shall pay the NASD the sum of \$2,150.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimant.

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

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ARBITRATORS' SIGNATURE

  
Arnald B. Crews, Esq.  
Public Arbitrator 10/25/93

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James F. Tucker  
Public Arbitrator

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Francis M. Hall  
Industry Arbitrator

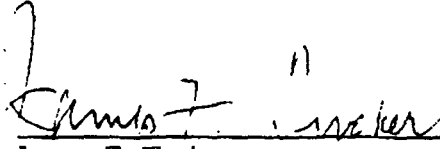
Decision Dated: November 3, 1993

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Award #92-00970

ARBITRATORS' SIGNATURE

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Public Arbitrator

  
James F. Tucker  
Public Arbitrator

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Francis M. Hall  
Industry Arbitrator

Date of Decision: November 3, 1993

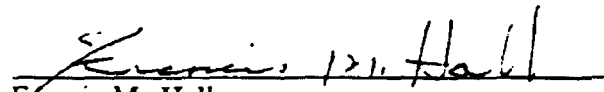
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Decision Dated: November 3, 1993