



N.A.S.D. AWARD

Arbitration

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Jerry Bensinger

92-01337

Name of Respondents

Prudential Securities Inc  
Jeffrey Moruzzi  
Nunzio Garzino

**REPRESENTATION**

For Claimant Jerry Bensinger ("Claimant"): Carl Mazzie, of Foster & Mazzie.

For Respondents Prudential Securities Inc. ("Prudential") and Nunzio Garzino ("Garzino"):  
David W. Schmidt, a sole practitioner.

Jeffrey Moruzzi ("Moruzzi") did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed: April 26, 1992.

Claimant's Submission Agreement signed on: February 20, 1992.

Joint Statement of Answer filed by Respondents Prudential and Garzino on: June 22, 1992.

Respondent Prudential's Submission Agreement signed on: June 18, 1992.

Respondent Garzino's Submission Agreement signed on: May 29, 1992.

Mr. Moruzzi did not file a Statement of Answer or Submission Agreement, as required, pursuant to Section 25 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions: December 14, 1992/2 sessions.

Hearing Location: NASD, Inc., New York, New York.

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### CASE SUMMARY

Claimant alleged he opened an account with Prudential during March 1990, wherein he advised Moruzzi he wanted to invest more conservatively than in previous years and to be consulted prior to transactions being made in his account. Claimant alleged Moruzzi made an unauthorized trade in his account regarding L.A. Gear, Inc. and that he was advised of said trade by a confirmation stating he had purchased 4,000 shares of L.A. Gear, Inc. on May 24, 1990 and that he advised Moruzzi to cancel same and was told the trade had been a mistake and was canceled. Claimant alleged he received a second confirmation stating he had purchased 1,000 shares of L.A. Gear, Inc. on May 24, 1990. Claimant alleged he contacted Moruzzi, with whom he had a long standing relationship, and Moruzzi stated he had made many unauthorized purchases of L. A. Gear, Inc. and that Claimant would be contacted by Garzino. Claimant alleged Moruzzi requested he advise Garzino that the trades had been authorized and that he was satisfied with Moruzzi's services and then he, Moruzzi, would make up Claimant's losses on these trades. Claimant also alleged Moruzzi advised him that if he did not indicate to Garzino that the trades were authorized that he, Moruzzi, would not be in the industry and would not be able to make up Claimant's losses. Claimant alleged he did as Moruzzi asked, when contacted by Garzino, to protect Moruzzi.

Claimant alleged Prudential was aware of Moruzzi's unauthorized trading in his account as well as other accounts; was negligent in its failure to supervise Moruzzi and Garzino; and was negligent in its hiring of Moruzzi.

Respondents Prudential and Garzino alleged that Claimant opened a Command Account with Prudential during February 1990 with financial advisor, Moruzzi, whom Claimant had known for approximately ten (10) years. Respondents alleged Claimant was a sophisticated investor. Respondents alleged that on or about May 24, 1990, Moruzzi and Claimant discussed a purchase of L.A. Gear, Inc. and Claimant then purchased 1,000 shares. Respondents maintained a confirmation was then mailed to Claimant. Respondents alleged on or about June 7, 1990, Garzino contacted Claimant wherein Claimant acknowledged receipt of the confirmation and that he had spoken to Moruzzi and authorized the trade prior to execution.

Respondents denied Claimant's allegations that they negligently hired and supervised Moruzzi.

Respondents alleged Claimant did not sustain a loss on the purchase of L.A. Gear, Inc. while his account was at Prudential and that the stock was sold while in Claimant's Merrill Lynch Pierce Fenner & Smith, Inc. account.

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Respondent Moruzzi did not submit a Statement of Answer.

**RELIEF REQUESTED**

Claimant requested: actual damages in the amount of \$27,539.19; pre-judgment interest and loss of investment income or reasonable return of this investment.

Respondents Prudential and Garzino requested: the Panel dismiss the claim in its entirety; and costs.

Respondent Moruzzi made no formal plea for relief.

**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.

The arbitration panel in the above-captioned matter has ruled that Claimant's claim was stayed as to Respondent Moruzzi due to a stipulation between Claimant Jerry Bensinger and Respondents Prudential Securities, Inc. and Nunzio Garzino that Moruzzi has filed a petition in bankruptcy court.

**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. The claims of Claimant Jerry Bensinger are dismissed;
2. Each party shall bear its own expenses, except that Respondent Prudential is hereby liable and shall pay to Claimant Bensinger the sum of \$400.00. Said amount to reimburse to Claimant the \$400.00 hearing session deposit previously paid to the NASD by Claimant.

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**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

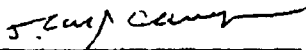
2 sessions X \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net \$400.00 due.

Forum fees Assessed Against:

1. Respondent Prudential is hereby liable and shall pay to the NASD, Inc. the sum of \$400.00.

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

Arbitrator Signature



Neil J. Carey/Public Arbitrator

Date of Decision: February 3, 1993

STATE OF *CONNECTICUT*  
COUNTY OF *FAIRFIELD*

On this *11<sup>th</sup>* day of *JANUARY*, 1993, before me personally appeared Neil J. Carey known and 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.

*Chas. L. Danahy*

CLERK OF SUPERIOR COURT  
FAIRFIELD COUNTY  
JAN 12 1993



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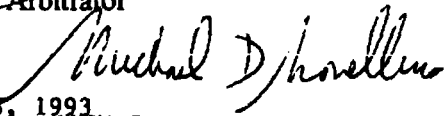
Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator Signature



Herbert N. Ladenheim/Industry Arbitrator

Date of Decision: February 5, 1993

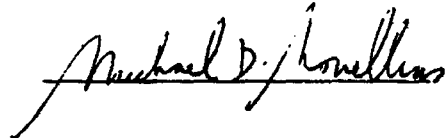


MICHAEL D. NOVELLINO  
Notary Public, State of New York  
No. 4979843  
Qualified in Suffolk County  
Commission Expires April 8, 1993

STATE OF *NY*

COUNTY OF *Suffolk*

On this *14* day of *Jan*, 1993, before me personally appeared Herbert N. Ladenheim known and 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.

A handwritten signature in cursive script, reading "Michael D. Novellino", written over a horizontal line.

**MICHAEL D. NOVELLINO**  
Notary Public, State of New York  
No. 4879843  
Qualified in Suffolk County  
Commission Expires April 8, 19*93*



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Forum fees Assessed Against:

1. Respondent Prudential is hereby liable and shall pay to the NASD, Inc. the sum of \$400.00.

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

Arbitrator Signature

A handwritten signature in dark ink, appearing to read "Henry McCoy II".

Henry McCoy II/Public Arbitrator

A second handwritten signature in dark ink, appearing to read "Henry McCoy II".

Date of Decision: February 3, 1993



STATE OF *New York*  
COUNTY OF *New York*

On this *6<sup>th</sup>* day of *January*, 1993, before me personally appeared Henry McCoy, II known and 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.

*Susan J. Unger*

SUSAN J. UNGER  
NOTARY PUBLIC, State of New York  
No. 4971387  
Qualified in Nassau County  
Commission Expires September 4, 1994

SUSAN J. UNGER  
NOTARY PUBLIC, State of New York  
No. 4971387  
Qualified in Nassau County  
Commission Expires September 4, 1994