

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants/Counterrespondents

Dean H. Poynter
Jeffrey D. Poynter

No. 92-01776

Name of Respondents/Counterclaimants

Prudential Securities, Incorporated
Robert Garrett, Sr.

REPRESENTATION OF PARTIES

For Claimants: John Miller, Esq., of Nygaard & Associates,
Overland Park, Kansas.

For Respondents: Robert S. Getman, Esq., of Prudential Securities,
Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 19, 1992.

Claimants' Submission Agreement signed: May 13, 1992.

Joint Statement of Answer filed by the Respondents on or about:
August 17, 1992.

Respondent Prudential Securities, Incorporated's Submission
Agreement signed on: August 14, 1992.

Respondent Robert Garrett, Sr.'s Submission Agreement signed on:
September 9, 1992.

Amendment to Respondents' Answer to Claimants' Statement of Claim
filed on or about: September 21, 1992.

Respondents' Amended Answer with Counterclaim filed on or about
June 15, 1993.

HEARING INFORMATION

Hearing dates: June 15, 1993. Two (2) sessions.
June 16, 1993. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimants, Dean H. Poynter and Jeffrey D. Poynter ("Claimants") alleged: Violations of the Kansas and Federal Securities Acts; fraud and misrepresentation; negligence; unsuitability; failure to supervise; breach of contract and violation of NASD Rules; breach of fiduciary duty; and RICO violations by Respondents Prudential Securities, Incorporated and Robert Garrett, Sr. ("Respondents"). Claimants asserted that the misrepresentations, acts, and omissions of the Respondents were done intentionally or recklessly, with the intent to conceal material information from Claimants. The allegations arose out of purchases and sales of Cascade International, Inc. stock for Claimants' account during 1991.

For their Answer, Respondents denied the allegations contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim for relief or to state any facts that support the claims set forth therein.
2. The Claimants were negligent and/or reckless, and their own negligence and/or recklessness was a substantial and proximate cause of all losses sustained by them.
3. The claimants are precluded from recovery by the principles of laches, ratification, waiver and estoppel.
4. That Claimants failed to mitigate damages incurred after Claimants knew or should have known of the wrongdoing alleged, and any damages to which Claimants may be entitled, which Respondents denied, must be reduced by the amount by which such damages could have been mitigated.
5. That Claimants are not entitled to any measure of damages other than out-of-pocket losses and specifically are not entitled to special, exemplary or punitive damages or an award of attorneys' fees as a matter of law, and any award of punitive damages would violate the due process clause.
6. That the Statement of Claim fails to state a cause of action under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.
7. At all times material herein, and in all matters relevant

to the allegations contained in the Statement of Claim, Respondents acted in good faith.

8. Claimants did not reasonably rely on any matters, statements or omissions attributable to Respondents.

9. Respondents are not liable to Claimants because they had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did Respondents breach any duty owed to Claimants if such a duty existed.

Respondents also asserted a Counterclaim against Jeffrey D. Poynter for an alleged \$5,777.02 debit outstanding in his account for a November 29, 1991, purchase of 3,000 shares of Cascade stock. Respondents asserted that Jeffrey D. Poynter refused to make payment for the trade.

RELIEF REQUESTED

Claimant requested to be reimbursed for the purchase price of Cascade stock, that all commissions on the Cascade sales be refunded to Claimants, that an award of punitive damages be entered against Respondents, that Claimants receive an award of interest, costs and attorneys' fees incurred in this action, and that all such damages be trebled.

Respondents requested that the Statement of Claim be dismissed in its entirety and that such other and further relief be awarded as the arbitration panel deemed just and proper. Respondents also asserted a Counterclaim for a \$5,777.02 outstanding debit, interest, and such other and further relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On June 7, 1993, Respondents filed a Motion to Bar Answer to the Counterclaim, and Motion for Partial Dismissal of the Statement of Claim. The Response and the Motions were forwarded to the panel on or about June 11, 1993. After deliberation, the panel denied the Motions.

On June 9, 1993, Claimants filed a Motion to Bar Respondents from using any documents or witnesses at the hearing. The Response and the Motion were forwarded to the panel on or about June 10, 1993. After deliberation the panel ordered the Respondents to provide the Claimants' counsel with a copy of the Respondents' witness list and exhibit list by 12:00 PM CDT (noon) on Saturday, June 12, 1993, or they would grant Claimants' Motion to Bar.

On June 15, 1993, Respondents brought to the hearing an Amended Answer and Counterclaim. After hearing argument from the parties, the panel allowed the Amendment.

The parties have agreed that the Award in this matter may be executed by 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(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants, Jeff Poynter's and Dean Poynter's claims are hereby denied and dismissed with prejudice.

2. Claimant/Counterrespondent, Jeffrey D. Poynter is liable for, and shall pay to Respondent/Counterclaimant, Prudential Securities, Inc. the sum of \$5,777.02 as satisfaction of all the Counterclaims made in this arbitration.

OTHER COSTS

Each party shall pay its own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

4 hearing sessions x \$300.00 = \$1,200.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimants.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable Counterclaim filing fee in the amount of \$500.00, and shall retain the Counterclaim hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Counterclaimants.

Additional forum fees in the amount of \$500.00 are assessed against Prudential Securities, Incorporated.

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

CONCURRING ARBITRATORS

Dated:

Name:

July 7, 1993

/s/Murray S. Levin
Murray S. Levin
Presiding Chair
Public Arbitrator

July 10, 1993

/s/David I. Lewin
David I. Lewin
Public Arbitrator

July 8, 1993

/s/Robert L. Cowee
Robert L. Cowee
Industry Arbitrator

Date of Service by the NASD: _____