

N.A.S.D. FINAL AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

H. Paul Richards

92-01995

Name of Respondents

Shearson Lehman Brothers, Inc.
Prudential Securities, Inc.
Theodore G. Peck

REPRESENTATION

For Claimant H. Paul Richards ("Claimant") appeared David Robbins, Esq. of the law firm of Kaufman, Finer Yaman Gilden & Robbins located in New York City, New York.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson") appeared John E. Jenkins, Esq. of Shearson Lehman Brothers, Inc. in-house counsel located in New York City, New York.

For Respondent Prudential Securities, Inc. ("Prudential") appeared William H. Freilich, Esq. of Prudential's in-house counsel located in New York City, New York.

For Respondent Theodore G. Peck ("Peck") appeared Charles J. Engel, Jr. of the Law Offices of Charles J. Engel, Jr. located in Syracuse, New York.

CASE INFORMATION

The Statement of Claim was filed on July 8, 1992. Claimant's

Submission Agreement was filed on June 12, 1992.

The Statement of Answer of Respondent Shearson Lehman Brothers, Inc. was filed on December 4, 1992 and the Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was executed on December 4, 1992.

The Statement of Answer of Respondent Prudential Securities, Inc. was filed on December 7, 1992. Respondent Prudential Securities, Inc. did not execute a Submission Agreement.

The Statement of Answer of Respondent Theodore G. Peck was filed on January 13, 1993 and the Submission Agreement of Respondent Peck was executed on December 4, 1992.

HEARING INFORMATION

Prehearing Dates/ Sessions:	July 9, 1993	-	1 Session
	September 15, 1993	-	1 Session
	November 30, 1993	-	1 Session
	January 24, 1994	-	1 Session

Hearing Dates/ Sessions:	January 26, 1994	-	2 Sessions
	January 27, 1994	-	2 Sessions
	May 2, 1994	-	2 Sessions
	May 3, 1994	-	2 Sessions

CASE SUMMARY

Claimant alleged that on August 24, 1988, to his surprise, Claimant received a "Confirmation of a buy" of TWA Notes amounting to \$172,823.96; that the date of purchase according to the confirmation was August 18, 1988; and that the confirmation was received by mail on August 24, 1988.

Claimant also alleged that he immediately telephoned Respondent Peck, a financial consultant employed by Respondent Shearson Lehman Brothers, Inc. Claimant further alleged that Respondent Peck made the purchase on margin without any authorization from the Claimant; that Claimant had never made a purchase on margin; and that Claimant had never authorized any purchases on margin in the past.

Further, Claimant alleged that he believed, after speaking with Respondent Peck, that he was committed to going forward with the purchase with no recourse whatsoever. It was alleged by the Claimant that Respondent Peck left his employment with Shearson Lehman Brothers, Inc. to accept employment with Respondent Prudential Securities, Inc. Claimant alleged that Respondent Prudential Securities, Inc. then began to badger the Claimant to pay the full amount of the balance outstanding from the margin purchase; that Claimant complained to Prudential that the

transaction was unauthorized; and that Prudential informed the Claimant that the position would be sold and Respondent Prudential would seek the remaining balance from the Claimant. Claimant stated that he did not pay the balance sought by Respondent Prudential.

Respondent Shearson Lehman Brothers, Inc. denied all allegations of wrongdoing asserted in the statement of claim. Respondent Shearson maintained that in signing the client agreement, the claimant agreed that any objections to a particular trade must be made within ten days after Shearson Lehman Brothers, Inc. had confirmed the orders and statements of the accounts in writing. Respondent Shearson contended that the confirmation set forth in complete and accurate detail (i) the investment purchased or sold; (ii) the day on which the transaction took place; (iii) the price at which the transaction took place; (iv) whether the transaction was on margin; and (v) the amount of commission or mark-up charged on the transaction. It was maintained by the Respondent that the confirmations explicitly stated that a failure to object "constitutes your acceptance of the transaction."

As and for its defenses, Respondent Shearson Lehman Brothers, Inc. maintained that the statement of claim failed to state a claim upon which relief could be granted, that Claimant's damages were caused solely, or in substantial part by the Claimant's own negligence, recklessness, and/or wrongdoing. Respondent Shearson further contended that the claimant is barred from any recovery because he directly instructed, directed, authorized, consented to, acquiesced in and/or ratified the transaction in question. Further, Respondent Shearson contended that the claims contained in the statement of claim are barred by the applicable statutes of limitations and the doctrine of laches; that Claimant had failed to mitigate any damages he may have suffered; that Respondent was not in a fiduciary relationship with Claimant under the circumstances of this case; and that the claims contained in the statement of claim are barred by the doctrines of waiver and estoppel.

Respondent Prudential Securities, Inc. maintained that it was not an appropriate party to the present dispute and requested that the statement of claim as it related to Prudential Securities, Inc. be dismissed. Respondent Prudential contended that Claimant's claim solely involves the purchase of TWA Senior Notes which occurred in August, 1988 while Claimant's account was at Shearson Lehman Brothers, Inc. and that there are no allegations stated in any respect regarding Prudential Securities, Inc. Respondent Prudential maintained that the only involvement Prudential had with Claimant was that at the time Claimant's broker, Respondent Peck, joined Prudential, Claimant's account was transferred to Prudential. Respondent Prudential maintained that nothing occurred in the account during the time the account was at Prudential.

Respondent Peck denied all allegations of wrongdoing alleged in the statement of claim. Respondent Peck maintained that while employed as a securities broker at Shearson Lehman Brothers, Inc. he opened

an account for the claimant on or about April 26, 1985; that Claimant was a man of means with experience in the market; and that Claimant purchased the TWA bonds through Shearson on August 18, 1988. Respondent Peck further maintained that prior to placing the order he discussed the purchase of the TWA bonds with Claimant in detail; that Claimant signed a margin agreement with Shearson; and that Claimant specifically authorized Respondent to purchase the TWA bonds on margin prior to placing the order.

RELIEF REQUESTED

Claimant requested an award in his favor against Respondents restoring Claimant to the position that Claimant had as of August 18, 1988, prior to the time of the unauthorized purchase.

Respondent Shearson Lehman Brothers, Inc. requested that the statement of claim be dismissed in all respects.

Respondent Prudential Securities, Inc. requested that the statement of claim be dismissed and costs assessed against Claimant for his requiring Prudential to defend a frivolous claim.

Respondent Peck requested that the statement of claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the award in this matter may be executed in counterpart copies to be simultaneously sent to each member of the panel for their signature while the originals remain on file with the NASD.

The arbitration panel finds that Respondent Prudential was required to sign a Submission Agreement pursuant to Sections 12 and 25 of the Code of Arbitration Procedure, being an NASD member firm at the time this controversy arose. This panel finds that it has jurisdiction over Respondent Prudential pursuant to Section 12 of the code.

AWARD

1. All claims against the respondents be and hereby are dismissed.
2. All claims by Respondent Prudential Securities, Inc. for attorneys' fees and costs be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitration panel has determined that the NASD shall retain the \$200.00 non-refundable filing fee and the following forum fees are

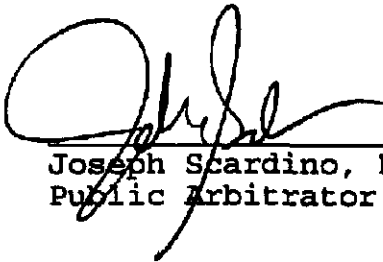
assessed:

hearing session deposit	=	\$ 750.00
4 pre-hearing conferences x \$300.00	=	\$1,200.00
8 hearing sessions x \$750 = \$6,000.00 - \$750.00	=	\$5,250.00
hearing session deposit	=	\$7,200.00

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
2. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
3. Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.

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

Concurring Arbitrators' Signatures
Name



Joseph Scardino, Esq.
Public Arbitrator - Chairperson

Catherine Ladnier
Industry Arbitrator

Martin S. Finn, Esq.
Public Arbitrator

Date of Decision July 12, 1994

STATE OF Massachusetts
COUNTY OF Suffolk

On this 14th day of July, 1994, before me personally appeared Joseph O. Scardino known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Anthony Drago Jr.

My Commission Expires: 11-25-99

assessed:


hearing session deposit	=	\$ 750.00
4 pre-hearing conferences x \$300.00	=	\$1,200.00
8 hearing sessions x \$750 = \$6,000.00 - \$750.00	=	\$5,250.00
hearing session deposit	=	\$7,200.00

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
2. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
3. Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.

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

Concurring Arbitrators' Signatures
Name

Joseph Scardino, Esq.
Public Arbitrator - Chairperson



Catherine Ladnier
Industry Arbitrator

Martin S. Finn, Esq.
Public Arbitrator

Date of Decision July 12, 1994

STATE OF New York

COUNTY OF Westchester

On this 5th day of July, 1994, before me personally appeared
Catherine Ladner known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Cynthia M. Newell

CYNTHIA M. NEWELL
Notary Public, State of New York
No. 01NE4872605
Qualified in Westchester County
Commission Expires October 8, 1994

assessed:

hearing session deposit	=	\$ 750.00
4 pre-hearing conferences x \$300.00	=	\$1,200.00
8 hearing sessions x \$750 = \$6,000.00 - \$750.00		
hearing session deposit	=	\$5,250.00
		<hr/>
		\$7,200.00

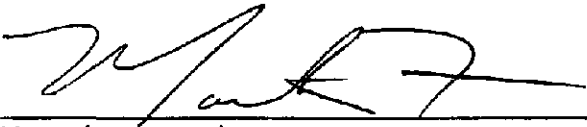
1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
2. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.
3. Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2400.00 representing one-third of forum fees assessed.

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

Concurring Arbitrators' Signatures
Name

Joseph Scardino, Esq.
Public Arbitrator - Chairperson

Catherine Ladnier
Industry Arbitrator



Martin S. Finn, Esq.
Public Arbitrator

Date of Decision July 12, 1994

STATE OF

COUNTY OF

On this 29th day of June, 1994, before me personally appeared
MARTIN S. FINN known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

John A. Lowelle

JOHN H. LOWELLE
Notary Public, State of New York
No. 02-487738
Qualified in Albany County
Commission Expires February 4, 1995