

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lawrence S. Schmitt

92-02072

Name of Respondents

Prudential Securities Inc

John Beisner

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 22, 1992, Claimant Lawrence S. Schmitt, who appeared Pro Se, alleged that Respondent John Beisner, while employed by Respondent firm Prudential Securities, Inc. made unsuitable recommendations for him to purchase CENTOCOR stock by misrepresenting it's safety, telling him the stock would rise. The Claimant further alleged that the stock price fell, and that although he expressed concern and wanted to sell the shares, the Respondents convinced him they were aware of the situation with CENTOCOR and that he should hold onto the stock. The Claimant contended that he should be reimbursed for money he has lost due to recommendations made by the Respondents.

Respondent Prudential Securities, Inc. and John Beisner, through their in-house counsel, Herbert J. Marek, Esq., who has since been replaced by Dominic Raimo, Esq., maintained that CENTOCOR stock was recommended to their clients, but that the mere fact that a firm makes such a recommendation, and the stock doesn't perform well is not sufficient reason for a firm to make an adjustment in a client's account. The Respondents contended that although they regret that the Claimant incurred a loss, these losses were due to CENTOCOR's performance in the stock market and not to any acts or omissions on the part of either Respondent.

In a counterclaim filed by the Respondents, they alleged that Claimant owes monies to Prudential Securities, Inc. due to failure to meet a margin call, and that although it liquidated positions in the client's account, a debit balance still exists.

In a separate Statement of Answer filed in addition to the Joint Answer with Respondent Prudential Securities, Respondent John Beisner maintained that the recommendation to buy CENTOCOR stock was suitable for the Claimant, and that the Claimant kept a close watch on the stock's activity, calling him almost everyday. Respondent John Beisner contended that once the stock plummeted, the Claimant called his office and spoke to Greg Martino, the Respondent's partner, and threatened them both, and that even though he'd lost money in this investment, the comments were uncalled for. The Respondent John Beisner maintained that he should not be held liable in this month.

In a reply filed by Claimant Lawrence S. Schmitt, he refuted the defenses used by the Respondents and contended that he should not be held liable for the debit balance in the account.

RELIEF REQUESTED

Claimant Lawrence S. Schmitt requested \$8,550.00 in actual damages.

Respondents Prudential Securities, Inc. and John Beisner requested the claims of the Claimant be dismissed and that Prudential Securities, Inc. be awarded \$3,152.00 on it's counterclaim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William L. Hawes, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on June 15, 1992, by the Respondent John Beisner on September 9, 1992, but not signed by the Respondent Prudential Securities, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

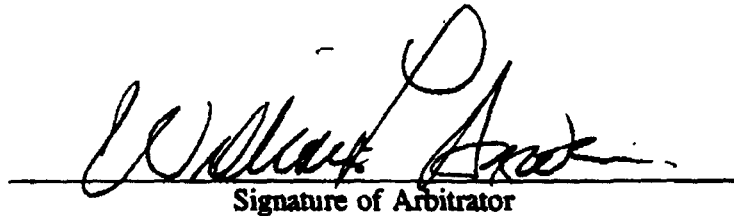
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. and John Beisner are jointly and severally liable and shall pay to Claimant Lawrence S. Schmitt \$4,400.00 in actual damages.
2. The counterclaim of Respondent Prudential Securities, Inc. against Claimant Lawrence S. Schmitt is dismissed in it's entirety.
3. The parties shall bear their respective costs and attorney's fees.

4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The \$575.00 counterclaim filing fee previously deposited with the NASD, Inc. by the Respondent Prudential Securities, Inc. shall also be retained by the NASD, Inc.

AFFIRMATION

I, **WILLIAM L. HAWES**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: May 4, 1993