

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Seymour H. Bernstein

92-02318

Name of Respondent

Prudential Securities Inc

REPRESENTATION

For Claimant: Seymour Bernstein, appearing Pro-Se.

For Respondent: Gerard J. Kowalski, Esq. of Prudential Securities Inc.

CASE INFORMATION

Statement of Claim filed: July 13, 1992.

Claimant's Submission Agreement signed on: June 19, 1992.

Statement of Answer filed by Respondent Prudential Securities Inc. on: October 13, 1992.

Respondent Prudential Securities Inc.'s Submission Agreement signed on: March 4, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: April 22, 1993 - One Session.

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleges that he instructed Respondent to sell RH Macy & Company Inc. bonds and that Respondent confirmed the sale of the bonds. Claimant further alleges that he was subsequently informed by Respondent that the sale had not been effected and that by such date the market price of the bonds had fallen substantially.

Respondent alleges that the failure to execute the sale was due to market conditions and not because of any action or inaction on the part of Respondent. Claimant further alleges the following defenses: that Claimant has failed to state a claim upon which relief may be granted; that the claim is barred by the applicable statute of limitations; that Claimant voluntarily assumed the risks; that Claimant is estopped from seeking recovery on the basis of allegations that are inconsistent with the representations and warranties made by Claimant to induce a settlement; that the claim is barred by the doctrine of laches; that Respondent acted in good faith and did not engage in a reckless, deceptive, manipulative or fraudulent act or practice; that Claimant failed to exercise due diligence; that Respondents owed no duty to disclose information to defendant other than that which was disclosed; that Respondent's actions were not the proximate cause of Claimant's damages; that the claim is barred by the statute of frauds; that Claimant failed to mitigate damages; that the claim is barred by the doctrine of *in pari delicto*; that Claimant was contributorily negligent.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimant withdrew his claim for punitive damages in the amount of \$20,000.

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.

RELIEF REQUESTED

Claimant requested damages in the amount of \$37,278, reflecting the amount receivable from the sale of the bonds.

Respondent requested the following relief:

- a) that the claim be dismissed in its entirety;
- b) that Claimant be required to pay all filing and forum fees;
- c) that Claimant be required to pay reasonable attorneys' fees, sanctions and costs.

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. is hereby liable and shall pay to the Claimant the amount of \$11,965. This amount is inclusive of interest as of April 22, 1993.
2. It is the determination of the panel that the subject bonds remain the property of Claimant.
3. Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$150 Non-refundable filing fee
\$500 Hearing session fees (1 session X \$500)

1. Total forum fees in the amount of \$650 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$650 previously deposited with the NASD.

Concurring Arbitrator's Signature

Name



Andrew Saulitis, Esq.

Public Chairperson

Date of Decision: June 8, 1993

AWARD

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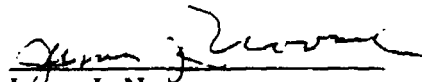
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Concurring Arbitrator's Signature
Name

Industry Arbitrator


James J. Noone

Date of Decision: June 8, 1993

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Public Arbitrator


George R. Freund

Date of Decision: June 8, 1993