

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Gil Gillard

92-02348

Name of Respondent(s)

Prudential Securities Inc
Shaun A. Mansfield

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 15, 1992, Claimant Gil Gillard, through his representative, Brian K. Lowe of Investors Arbitration Services, Woodland Hills, California, alleged that Respondent Prudential Securities, Inc., through its registered representative, Shaun a. Mansfield recommended unsuitable Securities to the Claimant, such as Prudential Bache Optimax Futures fund A & B, and that the Respondents also churned his account in order to generate commissions. The Claimant further alleged that the respondents misrepresented facts and made material omissions of fact regarding the Claimants' account, who relied wholly upon the Respondents, but would not have acted as he did had he been aware of the deception being practiced by the Respondents. The Claimant contended that Respondents Prudential Securities and Shaun A. Mansfield had a fiduciary duty to the Claimant which was breached, and that due to negligence and Respondent Prudential Securities Inc's failure to supervise Respondent Mansfield, as well as the reasons listed above, the Claimant has suffered damages for which he should be compensated.

Respondents Prudential Securities Inc. and Shaun A. Mansfield, through their in-house counsel, Kimberly Unger, Esq. maintained that the investments were suitable and in accordance with the Claimants' investment objectives, that the Claimant's account was handled with due care at all times, and that all transactions were conducted in accordance with Claimant Gillard's instructions. The Respondents also maintained that no misrepresentation were made to the Claimant, and that he was furnished with a prospectus regarding Optimax, which fully disclosed all risks. The Respondents contended that there was no fiduciary relationship between the Respondents and Claimant as a matter of law and the claims for breach of fiduciary duty should be dismissed, and further contended that Prudential Securities Inc. maintained a comprehensive

system of supervision over Respondent. Mansfield based on routine reviews of his daily activities, and none of his activities were ever found to be violative of industry standards in rules or regulations.

RELIEF REQUESTED

Claimant, Gil Gillard requested \$9,497.00 in actual damages, plus interest, costs and attorneys' fees. The Claimant also requested Punitive damages in an amount to be determined by the Arbitrator.

Respondent Prudential Securities Inc. and Shaun A. Mansfield requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert Bailey, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 7, 1992 and by the respondent Prudential Securities Inc. on October 26, 1992, but not signed by Respondent Shaun A. Mansfield as required by Sections 12 and 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. The claims of the Claimant Gil Gillard against Respondents Prudential Securities Inc. and Shaun A. Mansfield are dismissed in their entirety.
2. The Claimants' request for interest is denied.
3. The Claimants request for punitive damages is denied.
4. The parties shall bear their respective costs and Attorneys' fees.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, inc., by the Claimant shall be retained by the NASD.

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AFFIRMATION

I, Robert Bailey, 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:

January 7, 1993

DATED BY THE NASD, INC.: January 14, 1993