

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Michael Construction Co., Inc.,  
The Michael Construction Co., Inc.  
Employee Pension Plan and Trust, and  
The Michael Construction Co., Inc.  
Money Purchase Plan and Trust,

Claimants,

vs.

No. 92-02472

Prudential Securities Incorporated, and  
Ronald Fox,

Respondents.

---

REPRESENTATION OF PARTIES

For Claimants: Thomas E. Buess, Esq., of Rosenstein and Buess,  
Chicago, Illinois.

For Respondent Prudential Securities: Peter Byer, Esq., Vice  
President, Assistant General Counsel, Prudential Securities  
Incorporated, New York, New York.

For Respondent Ronald Fox: Philip M. Goldberg, Esq., of Coffield  
Ungaretti & Harris, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: July 27, 1992.

Claimants' Submission Agreements signed on: July 13, 1992, and  
September 22, 1992.

Statement of Answer filed by Respondent Prudential Securities  
Incorporated on or about: January 12, 1993.

Respondent Prudential Securities Incorporated's Submission  
Agreement signed on: February 9, 1993.

Statement of Answer filed by Respondent Ronald Fox on or about:  
January 28, 1993.

Respondent Ronald Fox's Submission Agreement signed on: January  
27, 1993.

HEARING INFORMATION

Hearing dates: September 2, 1993. Two (2) sessions.  
September 3, 1993. Two (2) sessions.  
September 22, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Michael Construction Co., Inc., The Michael Construction Company., Inc. Employee Pension Plan and Trust, and the Michael Construction Co., Inc. Money Purchase Plan and Trust, Irving and Beatrice Koldin, as trustees, ("Claimants") alleged: Violations of 15 U.S.C. sec.78j(b) and Rule 10b-5 promulgated thereunder; excessive and unnecessary trading; failure to supervise; breach of fiduciary duty; common law fraud; and violation of Section 2 of Article II of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. by Respondent Prudential Securities Incorporated ("PSI") and Respondent Ronald Fox ("Fox"). The allegations arose out of transaction in the securities listed as exhibit A to the Statement of Claim, and more fully covered at the hearing of this matter.

In its Answer, PSI denied any wrongdoing on its part which would have led to the losses in Claimants' accounts. In addition, PSI asserted the defenses of waiver and ratification.

Fox denied the allegations contained in the Statement of claim, unless specifically admitted in his Answer.

RELIEF REQUESTED

In Counts I, IV, VII, X, and XIII, Claimant, The Michael Construction Co., Inc. Employee Pension Plan and Trust requested an award against Respondents Prudential and Fox in the amount of \$345,795.00, plus the commissions paid, in addition to such other relief as the arbitrators deemed proper.

In Counts II, V, VIII, XI, and XIV, Claimant, The Michael Construction Co., Inc. Money Purchase Plan and Trust requested an award against Respondents PSI and Fox in the amount of its damages, in addition to such other relief as the arbitrators deemed proper.

In Counts III, VI, IX, XII, and XV, Claimant, Michael Construction Co., Inc. requested an award against Respondents PSI and Fox in the amount of its damages, in addition to such other relief as the arbitrators deemed proper.

Respondent PSI requested that the Statement of Claim be dismissed

in its entirety as to PSI.

Respondent Fox requested that the arbitrators enter an award in his favor, denying Claimants any relief, and awarding him all fees and costs of this action.

OTHER ISSUES CONSIDERED & DECIDED

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities Incorporated and Ronald Fox are liable for, and shall pay to Michael Construction Co., Inc. the sum of \$28,137.00, plus simple interest at the rate of five (5) percent per year for two (2) years as satisfaction for all of its claims herein. Prudential Securities Incorporated shall bear 60% of the liability, and Ronald Fox shall bear 40% of the liability to Michael Construction Co., Inc.
2. Respondents Prudential Securities Incorporated and Ronald Fox are liable for, and shall pay to the Michael Construction Co., Inc. Money Purchase Plan and Trust the sum of \$31,824.00, plus simple interest at the rate of five (5) percent per year for two (2) years as satisfaction of its claims herein. Prudential Securities Incorporated shall bear 60% of the liability, and Ronald Fox shall bear 40% of the liability to Michael Construction Co., Inc.
3. Respondents Prudential Securities Incorporated and Ronald Fox are liable for, and shall pay to The Michael Construction Co., Inc. Employee Pension Plan and Trust the sum of \$280,039.00, plus simple interest at the rate of five (5) percent per year for two (2) years as satisfaction for all of its claims herein. Prudential Securities Incorporated shall bear 60% of the liability, and Ronald Fox shall bear 40% of the liability to The Michael Construction Co., Inc. Employee Pension Plan and Trust.

OTHER COSTS

Each party shall bear their own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more specifically below.

FORUM FEES

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

6 hearing sessions x \$750.00 = \$4,500.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimants.

Additional forum fees in the amount of \$1,500.00 are assessed against the Claimants.

Additional forum fees in the amount of \$1,350.00 are assessed against Respondent Prudential Securities Incorporated.

Additional forum fees in the amount of \$900.00 are assessed against Respondent Ronald Fox.

Pursuant to Sections 30(b) and 43(c) of the Code, the NASD shall retain the postponement fee in the amount of \$750.00 previously paid by Respondent Prudential Securities Incorporated.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

October 8, 1993

/s/Robert C. Bonges  
Robert C. Bonges  
Presiding Chair  
Public Arbitrator

October 13, 1993

/s/Quinton F. Seamons  
Quinton F. Seamons  
Public Arbitrator

October 12, 1993

/s/Craig W. Henderson  
Craig W. Henderson  
Industry Arbitrator

Date of Service by the NASD: 10-18-93