

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael Kaplan

92-02679

Name of Respondents

Prudential-Bache Securities Inc.  
Jeanette Markus

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**REPRESENTATION**

For Claimant, Michael Kaplan ("Kaplan"): Dennis M. Boyce, Esq., West Palm Beach, Florida.

For Respondents, Prudential Securities, Inc. ("Prudential") and Jeannette Markus ("Markus"): V. Michael Arias, Esq. of Prudential Securities, Inc.

**CASE INFORMATION**

Statement of Claim filed: 8/11/92.

Claimant's Submission Agreement signed on: 7/30/92.

A joint Statement of Answer filed by Respondents, Prudential and Markus on: 10/30/92.

Respondents did not sign submission agreements as required by Section 25 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions: 4/15/94-two (2) sessions.  
5/05/94-two (2) sessions.  
5/28/94-two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimant alleged that in December of 1990, he received some information about a penny stock, First American Energy Corporation ("First American"), which led him to believe it was a good investment. Claimant further alleged that he was advised that the stock was available through a particular broker at Prudential whose husband was also the accountant for the firm and that he met with the broker and that after confirming all of the information sought her recommendation as to whether the stock was a good investment. Claimant stated that upon Respondent's recommendation he invested \$26,900.00 in said stock but later learned that the broker's husband was not the accountant for the company but rather a corporate officer of the company and a partner of the majority share holders in his ownerships of subsidiary corporations that the company was buying. Claimant further stated that at the same time, the broker was selling these shares to the Claimant for between \$3 1/2 to \$1/4 per share her husband received two hundred thousand shares of the stock in compensation for his interest in one of the subsidiary companies and \$25,000.00 in cash. Claimant stated that the Claim is based upon breach of fiduciary duty, fraud, lack of suitability and violation of Florida and Federal securities laws.

Respondents denied all allegations of wrongdoing and maintained that Claimant admitted that Markus did not solicit him to purchase the stock and that Claimant knew that the stock was extremely volatile and therefore speculative. Respondents further maintained that Claimant was financially suitable to purchase First America and that his investment objective was clearly to speculate on what he believed to be a "hot" tip and that Claimant continues to speculate by trading in options. Respondents stated that Claimant has shown himself to be an astute businessman as reflected in the success of his chiropractic business and that Claimant was fully cognizant of the risks associated with First American and did not justifiably rely on anything that Markus said or did not say to him. Respondents contended that Markus was simply an order taker for Claimant and owed him only the duty to execute the trade pursuant to his instructions, which she carried out.

### **RELIEF REQUESTED**

Claimant requested damages of specific losses of \$26,944.00 plus attorneys' fees of \$3,250.00 costs of \$2,000.00 and Interest on the loss at the legal rate from 1/3/90.

Respondents requested dismissal of the Claim in its entirety and that the Panel assess costs against the Claimant for the defense of this claim.

**OTHER ISSUES CONSIDERED & DECIDED**

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.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Prudential And Markus, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorneys' fees, costs and interest are hereby denied.
3. Respondents' request for costs is hereby denied.

**OTHER COSTS**

The parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,400.00 (six hearing sessions X \$400.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,200.00 for which the NASD shall retain the \$400.00 previously deposited leaving a balance of \$800.00 due to the NASD from Claimant.
2. Respondents, Prudential and Markus, are hereby assessed forum fees in the amount of \$1,200.00, jointly and severally, payable to the NASD, Inc.

3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/

\_\_\_\_\_  
Sterling F. Tremayne, Esq.

Public/Chairman

/s/

\_\_\_\_\_  
Ronald C. Polk, Esq.

Public/Panelist

/s/

\_\_\_\_\_  
Richard D. Longacre

Industry/Panelist

Date of Decision: June 30, 1994