

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Temple University of the Commonwealth
System of Higher Education

92-02959

Name of Respondents

Prudential Securities Inc
David Beale
Robert Hirsch

REPRESENTATION

For Claimant Temple University of the Commonwealth System of Higher Education ("Claimant"): Michael K. Coran, Esq. of the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers.

For Respondent Prudential Securities, Inc. ("PSI"), David Beale ("Beale"), and Robert Hirsch ("Hirsch"): Rita Durant, Esq. and Marc Durant, Esq. of the law firm of Durant & Durant.

CASE INFORMATION

Statement of Claim filed: September 1, 1992

Claimant's Submission Agreement signed on: August 31, 1992

Joint Statement of Answer filed by Respondents PSI, Beale and Hirsch (collectively referred to as "Respondents") on: November 12, 1992.

The Respondents did not execute Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions: August 3, 1993 - two sessions
 August 4, 1993 - two sessions
 August 31, 1993 - two sessions
 September 1, 1993 - two sessions

Hearing Location: NASD Office, Philadelphia, Pennsylvania

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CASE SUMMARY

Claimant alleged that it placed an order with Hirsch to sell \$35,000,000 of United States Treasury Notes ("Notes"). Claimant alleged that Respondents purchased the Notes for Claimant's account rather than selling the Notes as directed. Claimant alleged that in so doing, Respondents breached their contract with Claimant. Claimant alleged that by Respondents handling of the entire transaction, they acted negligently, recklessly and willfully, breaching fiduciary duties and engaging in self dealing. Claimant alleged that as a result of PSI's error in purchasing rather than selling the Notes, Claimant incurred damages.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that they followed the instructions given to them by Claimant's agents at all times. Respondents maintained that Hirsch acted merely as an order taker and that Ramona Cook, agent for Claimant, told Hirsch to obtain an offer for the Notes. Respondents maintained that Claimant was promptly notified of its purchase of the Notes. Respondents maintained that Larry Connelly, Assistant Treasurer of Claimant gave the order to sell the entire \$70 million of the Notes. Respondents maintained that Claimant followed the advice of its own experts to its detriment. Respondents maintained that commissions charged on the purchase and sale of the Notes were fair, reasonable and disclosed to Claimant. Respondents maintained that Claimant refused to accept Respondents' advice and in so doing caused the loss to be significantly greater.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$350,000, punitive damages, costs and attorneys' fees.

Respondents requested that Claimant's claim be dismissed in its entirety and that Respondents be reimbursed for costs and fees in connection with this proceeding.

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.

That pursuant to the by-laws of the NASD and Section 12 of the Code of Arbitration Procedure, the Respondents were required to submit to this

arbitration notwithstanding their failure to execute Submission Agreements. Therefore, Respondents PSI, Beale and Hirsch are bound by the Panel's rulings and determinations.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and briefs, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That the Panel finds in favor of Respondent David Beale and against the Claimant on all claims.
2. That the Panel finds in favor of Respondent Robert Hirsch and against Claimant on all claims.
3. That the Panel finds in favor of Claimant and against Respondent Prudential Securities, Inc. in the amount of ONE HUNDRED FIVE THOUSAND AND 00/100 DOLLARS (\$105,000); inclusive of interest.
4. That the Panel finds in favor of Respondent Prudential Securities Inc. and against Claimant on the claim for punitive damages.
5. That Each party shall bear their own costs and attorneys' fees, except as specifically provided for herein.

FORUM FEES

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

$$8 \text{ hearing sessions} \times \$750 = \$6,000$$

The Panel has determined that of the original filing fee of \$950 (non refundable fee of \$200 and hearing session deposit of \$750) that Respondent PSI shall reimburse to Claimant the sum of \$475.

The Panel has determined that hearing session fees shall be equally apportioned between Claimant and Respondent Prudential Securities, Inc., so that Claimant is assessed forum fees in the amount of \$3,000 and PSI is assessed forum fees in the amount of \$3,000, this amount shall be reduced by \$375 thereby reflecting the portion of the hearing session deposit that PSI was instructed to refund to

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Claimant. The amount due from PSI as forum fees is \$2,625.

Claimant is entitled to offset its \$3,000 hearing fee assessment with its remaining hearing session deposit of \$375, so that the amount due from the Claimant as forum fees is \$2,625.

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

Concurring Arbitrator's Signature

Name

Industry


Gerald D. Linette

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Concurring Arbitrator's Signature

Name


Lionel J. Goulet, Esq.

Public

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Concurring Arbitrator's Signature

Name



Guillermo L. Bosch, Esq.

Public/Industry

NASD Date of Decision: September 30, 1993