

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimants**

Roy H. Hite  
Ethlyn P. Hite

NASD Arbitration  
No. 92-02998

**Name of Respondents**

Prudential Securities, Inc.  
Martin A. Klein, III  
Michael J. Zaccaro

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**REPRESENTATION**

For Claimants: Lionel Z. Glancy, Esq. - Beverly Hills, California

For Respondents: Patricia A. Fitzpatrick, Esq. - Prudential Securities Inc. - New York, New York

**CASE INFORMATION**

Statement of Claim filed: September 8, 1992

Claimants' Submission Agreement signed: August 17, 1992

Joint Statement of Answer filed by Respondents: January 13, 1993

Respondent. Prudential Securities, Inc.'s Submission Agreement signed: January 14, 1993

Respondent. Michael J. Zaccaro's Submission Agreement signed: January 19, 1993

### **HEARING INFORMATION**

Pre-Hearing Conference: June 22, 1993 - One Session

Hearing Date/Sessions: July 21, 1993 - Two Sessions

Hearing Location: Los Angeles, California

### **CASE SUMMARY**

Claimants alleged that Respondents engaged in a series of unauthorized trades in claimants' account. It is alleged that said trades were an effort to maximize commissions. Claimants also assert claims for fraud, breach of fiduciary duty, negligence, churning, and claim under California Welfare and Institution Code Section 15600 et. seq.

Respondents denied each and every allegation in the Claim and specifically deny the churning allegation in that no commissions were charged for any trades made.

### **RELIEF REQUESTED**

Claimants seek compensatory damages according to proof, \$1,000,000.00 for emotional distress, interest, costs, attorney's fees, and \$2,000,000.00 in punitive damages.

Respondents, seek dismissal of the claim in its entirety and costs related to defense of the 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.

After Claimant's opening statement, Respondents moved to dismiss all claims. Said motion was denied by the Panel.

Respondents moved to dismiss all claims against Martin A. Klein, III and Michael Zaccaro, with prejudice. Said motion was granted by the panel.

Respondents moved to dismiss the claims for fraud and breach of fiduciary duty. Said motion was granted by the panel.

### **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. Each and every claim of Claimants, Roy H. Hite and Ethlyn P. Hite, against Respondent, Prudential Securities, Inc. is dismissed, with prejudice.
2. Claimants, Roy H. Hite and Ethlyn P. Hite, shall pay to Respondent, Prudential Securities, Inc., the sum of \$1,300.00 for reimbursement of Respondent's travel costs.
3. The NASD shall retain all fees and deposits made.

### **FORUM FEES**

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

Claimants, Roy H. Hite and Ethlyn P. Hite, are assessed and shall pay to the NASD the sum of \$1,000.00 representing forum fees for one hearing session.

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

## ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Frank Smith	Public Chairperson
Milton Bennett	Industry Panelist
Clifford Schiffer	Public Panelist

### Concurring Arbitrators' Signatures

M. C. Bennett

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Date of Decision:

8/5/93