

N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Fernande Durban

92-03222

Name of Respondent(s)

Prudential Securities, Inc.
PaineWebber, Inc.

REPRESENTATION

For Claimant: David E. Shellenberger, Esq.

For Respondent PaineWebber, Inc.: Joseph A. Vallo of PaineWebber Inc.

For Respondent Prudential Securities, Inc.: Eric Reider of Robinson Silverman Pearce
Aronsohn & Berman.

CASE INFORMATION

Statement of Claim filed on: September 23, 1992.

First Amendment to the Statement of Claim filed on: December 14, 1992.

Second Amendment to the Statement of Claim filed on: April 7, 1993.

Claimant's Submission Agreement signed on: September 18, 1992.

Statement of Answer filed by Respondent, PaineWebber Inc. on: December 7, 1992.

Reply to the Second Amendment to the Statement of Claim filed by Respondent, PaineWebber
Inc. on: April 15, 1993.

Respondent, PaineWebber Inc.'s Submission Agreement signed on: December 4, 1992.

Statement of Answer filed by Respondent, Prudential Securities, Inc. on: December 1, 1992.

Reply to the First Amendment to the Statement of Claim filed by Respondent, Prudential Securities, Inc. on: January 12, 1993.

Reply to the Second Amendment to the Statement of Claim filed by Respondent, Prudential Securities, Inc. on: April 16, 1993.

Respondent, Prudential Securities, Inc.'s Submission Agreement signed on: November 30, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 2, 1993/One session

Hearing Dates/Sessions: June 16, 1993/Two sessions
June 17, 1993/Two sessions

Hearing Location: NASD offices located in New York City.

CASE SUMMARY

Claimant alleges that she is an unsophisticated investor and that she told her broker, Gregory P. Fabio ("Mr. Fabio"), that she only wanted tax-free bonds when she opened her account with Respondent PaineWebber Inc. ("PaineWebber") and again when she followed Mr. Fabio to Respondent Prudential Securities, Inc. ("Prudential"). Claimant further alleges that Mr. Fabio churned her accounts and made unauthorized and unsuitable transactions, including the use of margin, short-term trading and the purchase of stocks, mutual funds and interests in limited partnerships. Claimant alleges that Respondents are liable for failure to supervise and for breach of contract, negligence, and fraud under the principle of respondent superior and the "controlling person" provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934. Claimant also alleges that Respondents are liable for the reckless hiring and negligent retention of Mr. Fabio and also for omitting to disclose that numerous customer complaints had been made against him.

Respondent PaineWebber maintains that Claimant's investment objectives changed from conservative to aggressive while her account was with Respondent PaineWebber. Respondent PaineWebber also maintains that Claimant has failed to establish a claim of churning and further maintains that every trade in the account was expressly ordered by Claimant and ratified by monthly account statements, confirmations and Claimant's written letter. Respondent PaineWebber denies all allegations of wrongdoing regarding the suitability of trading in Claimant's account and denies that it had a duty to disclose customer complaints against Mr. Fabio.

Respondent Prudential maintains that the trading activity in Claimant's account was consistent with her investment objectives and that Claimant authorized every transaction in the account, including the use of margin and she received a confirmation for each transaction in her account and received monthly account statements reflecting all the activity in her account and she reviewed the account statements and the activity reflected in the statements at least monthly with Mr. Fabio when they met at Claimant's home and she exhibited a thorough understanding of the information in the account statements. Respondent Prudential also maintains that Respondent Prudential properly supervised the handling of Claimant's account and adhered to the standards and practices of the securities industry. Respondent Prudential further maintained New York does not allow for the extraordinary relief being sought by the Claimant. With respect to the claim that Respondent Prudential recklessly hired and negligently retained Fabio, Respondent Prudential maintains that Claimant has failed to state a cause of action. Respondent Prudential also denies that it had a duty to disclose unverified and unadjudicated complaints against brokers.

RELIEF REQUESTED

Claimant requested awards against PaineWebber and Prudential in the amounts of \$70,966 and \$165,162, respectively, plus interest, costs and attorneys' fees. Claimant also requested awards of punitive damages against PaineWebber and Prudential in the amounts of \$100,000 and \$400,000, respectively, and the sum of \$200,000 for emotional distress.

Respondent PaineWebber requested that the Claim be dismissed in its entirety and that costs be awarded in its favor.

Respondent Prudential requested that the Claim be dismissed in its entirety.

AWARD

Prior to entering an award, the Panel was informed that Claimant entered into a settlement agreement with Respondent PaineWebber Inc.

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:

- a) Respondent Prudential Securities, Inc. is hereby liable and shall pay to Claimant Fernande Durban the sum of \$109,799 plus simple interest at the rate of 6.7% per annum from the date of this decision until the payment of this award.
- b) The Claimant's request for damages for emotional distress is denied.

- c) The Claimant's request for punitive damages is denied.
- d) Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

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

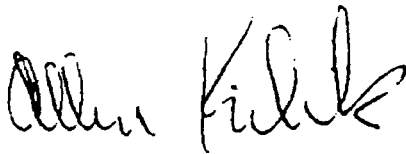
4 sessions(\$4,000) + pre-hearing conference(\$300), less Claimant's hearing session deposit(\$1,000) = net \$3,300 due.

Forum fees Assessed Against: Prudential Securities, Inc.

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

Concurring Arbitrators' Signatures
Name

Public/Industry



Allen Kilik, Esq.

Public Arbitrator


Theodore Kimelman

Industry Arbitrator


Maria D. Cirillo

Public Arbitrator

Date of Decision: August 4, 1993

STATE OF:

SS:

COUNTY OF:

On this 30th day of June, 1993, before me personally appeared Allen Kilik, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



HELENA R. MONTEISO
NOTARY PUBLIC, STATE OF NEW JERSEY
MY COMMISSION EXPIRES MAY 3, 1996

STATE OF: NEW YORK

SS:

COUNTY OF: NASSAU

On this 8 day of JULY, 1993, before me personally appeared Theodore Kimelman known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



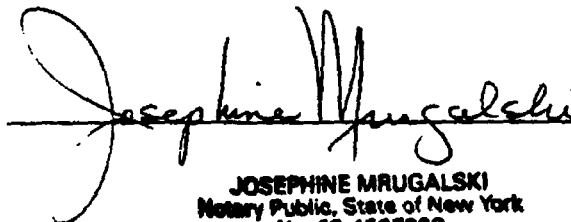
GLORIA HEWITT
NOTARY PUBLIC, State of New York
No. 01-6684885
Qualified in Nassau County
Commission Expires April 30, 1994

STATE OF:

SS:

COUNTY OF:

On this 2nd day of August, 1993, before me personally appeared Maria D. Cirillo known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.



JOSEPHINE MRUGALSKI
Notary Public, State of New York
No. 60-4627920
Qualified in Westchester County
Commission Expires 6/30/94