

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert H. Cook, Jr.

92-03503

Name of Respondents

Prudential Securities, Inc.
Richard Kaneb
Scott B. Morton

REPRESENTATION

For Claimant, Robert H. Cook, Jr. ("Cook"): George H. Moss, Esq., of Moss, Henderson, Van Gassbeck, Blanton & Koval, P.A.

For Respondents, Prudential Securities, Inc. ("Prudential"), Richard Kaneb ("Kaneb") and Scott B. Morton ("Morton"): Delmer C. Gowing, III, Esq., of Honigman Miller Schwartz and Cohn.

CASE INFORMATION

Statement of Claim filed: 10/15/92.

Claimant's Submission Agreement signed on: 10/1/92.

A Joint Statement of Answer filed by Respondents, Prudential, Kaneb, and Morton filed: 12/21/92.

Respondent, Kaneb's Submission Agreement signed on: 1/20/92.

Respondent, Morton's submission agreement signed on: 11/9/92.

HEARING INFORMATION

Hearing Dates/Sessions: 12-13-93/Two (2) sessions.
12-14-93/Two (2) sessions.
12-15-93/Two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

CASE SUMMARY

Claimant, alleged that he was an unsophisticated investor when he authorized Respondents to use \$100,000.00 from his account at Prudential to invest between October of 1991 and June of 1992. Claimant alleged that Respondents, thereafter, engaged in a pattern of unsuitable and unauthorized trading in his account and churned his account, resulting in substantial losses to him. Claimant further alleged that Prudential failed to supervise Kaneb, its registered representative and that Respondents actions constituted violations of Federal Securities Law Section 10(b) of the Securities Act of 1934 and Florida Securities Law Chapter 517.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant is an experienced investor who emphasized that his primary objective was speculation and that prior to each purchase Claimant was provided with an explanation of the investment strategy which clearly spelled out the risks of the investments as well as their volatile nature. Respondents maintained that no fiduciary relationship existed between Claimant and Respondents but that the recommended investment vehicles adopted by Claimant were in accordance with his level of investor sophistication. Respondents further admitted that they entered into an agreement whereby Kaneb would be allowed to trade \$100,000.00 plus any earnings generated therefrom, of the Money Market Fund in an extremely speculative manner in an attempt to enhance the value of Claimant's account, but that because of a sudden downturn in March 1992 of a particular equity that Kaneb and Cook were following and investing, the amount that Kaneb was to trade speculatively fell below \$100,000.00. Respondents stated that they offered to make Claimant whole less the \$100,000.00 he had speculated but that Claimant refused.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$433,346.22 plus interest, punitive damages of \$1,099,745.40 plus fees and costs of 368,000.00 for a total award of \$1,901,091.62.

Respondents requested dismissal of the Claim plus costs.

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. Respondent, Prudential, is found severally liable and shall pay to the Claimant the amount of \$211,410.00 plus interest at the legal rate of 12% per annum from 10/1/92 to 12/15/93 in the amount of \$30,651.55 for a total due to the Claimant from Prudential of \$242,061.55.
2. Respondent, Kaneb, is found severally liable and shall pay to the Claimant the amount of \$80,000.00, plus interest at the legal rate of 12% per annum from 10/1/92 to 12/15/93 in the amount of \$11,598.91 for a total due to the Claimant from Kaneb of \$91,598.91.
3. Respondent, Morton, is found severally liable and shall pay to the Claimant the amount of \$20,000.00, plus interest at the legal rate of 12% per annum from 10/1/92 to 12/15/93 in the amount of \$2,899.73 for a total due to the Claimant from Morton of \$22,899.73.
4. Claimants' requests for attorneys' fees, costs, expenses, and punitive damages are hereby denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,500.00 (six (6) hearing sessions X \$750.00).

1. Respondent, Prudential, is hereby assessed forum fees of \$4,500.00 of which \$750.00 shall be paid directly to the Claimant and the remaining \$3,750.00 shall be paid to the NASD, Inc.

2. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name	Public/Industry
<u>/s/</u>	
<u>John P. Cullem, Esq.</u>	Public/Chairman
<u>/s/</u>	
<u>Alan B. Goldstein, Esq.</u>	Industry/Panelist
<u>/s/</u>	
<u>John J. Hearn, Esq.</u>	Public/Panelist

Date of Decision: February 2, 1994