

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ray Veldman

92-03511

Name of Respondents

Prudential Securities Incorporated;
Krish Raman;
Mark Tabit

REPRESENTATION

Claimant Ray Veldman was represented by Bonnie E. Spencer, Esq. and Tom Hunt, Esq. of Jenkins & Gilchrist in Houston, Texas.

Respondents Prudential Securities Incorporated, Krish Raman and Mark Tabit were represented by Peter Byer, Esq. of Prudential Securities Incorporated in New York, New York.

CASE INFORMATION

Claimant's Submission Agreement was signed on October 8, 1992 by Ray Veldman.
The Statement of Claim was filed on October 14, 1992.

The First Amended Statement of Claim was filed on January 27, 1993.

Respondent Prudential Securities Incorporated's Submission Agreement was signed by December 24, 1992 by Peter Byer, Esq., Vice President of Prudential Securities Incorporated.
Respondent Mark Tabit's Submission Agreement was signed on January 19, 1993.
Respondent Krish Raman's Submission Agreement was signed on January 5, 1993.

The Joint Statement of Answer was filed by the Respondents on December 24, 1992.

The Claimant filed a Motion to Preclude the Joint Statement of Answer on January 11, 1993. The Respondents filed a Response to the Motion to Preclude on January 14, 1993. The Claimants filed a Reply to this Response on January 21, 1993.

Respondents' Motion to Change Situs was filed on January 28, 1993. Claimant's Response to this Motion was filed on February 2, 1993.

HEARING INFORMATION

Pre-Hearing Conference: May 14, 1993 for One (1) session before One (1) arbitrator.

Hearing Date/Sessions: May 19, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Ray Veldman ("Veldman") alleged that Respondents Krish Raman ("Raman") and Mark Tabit ("Tabit"), while employed by and acting as an agent for Respondent Prudential Securities Incorporated ("Prudential"), made an unauthorized purchase of Vitesse stock and unauthorized sales of Union Carbide and Aritech stock. It was specifically alleged that:

1. In May 1987, Veldman opened an investment account with Prudential and completed a new account form indicating an annual income of approximately \$50,000.00, a net worth of approximately \$35,000.00 and an investment goal of long term growth. Veldman was an unsophisticated investor who had never invested in options or stocks on margin until investing at Prudential;
2. In October 1987, Raman completed on behalf of Veldman a Prudential client option agreement stating that his net worth was \$100,000.00 and forced Veldman into a profile which allowed Raman to put Veldman in unsuitable investment vehicles. In May 1991, upon Raman's insistence and recommendation, Veldman began buying stocks on margin, investing in individual stocks and trading in options, increasing his account from \$6,000.00 to \$45,000.00 due to deposits made by Veldman:

3. After approximately six months of options trading, Veldman told Raman that he was not interested in pursuing any further options and wanted to liquidate all of his option holding because his job required extensive travel and he found it difficult to maintain regular contact with Raman. Upon Raman's recommendation, Veldman purchased 300 shares of Centocor stock, 200 shares of Chiron stock, 2,000 shares of Data IO stock and 1,000 shares of Wisconsin Pharmacal stock, all on margin, between November 1991 and February 1992. Veldman, who did not understand the significance of the phrase, discovered after these purchases that Prudential was the market maker in all except the Wisconsin Pharmacal stock. As the margin in the account continued to increase, Veldman told Raman during a conversation on February 20, 1992 that he wanted to lower his margin and that the margin level was unacceptable.;

4. Veldman had previously informed Raman not to make any purchases without his direct authorization and instructed Raman that he could not allow the level of margin to reach an unacceptable level. However, on February 27, 1992, Raman sold 300 shares of Union Carbide at \$25.00 per share and 1,000 shares of Aritech at \$4.25 per share without the Claimant's authorization then purchased 1,000 shares of Vitesse at \$20.75 per share without authorization, increasing margin by \$10,000.00. Veldman had never heard of or ever discussed Vitesse with Raman prior to this trade and Veldman had told Raman repeatedly that he wanted to hold the Union Carbide and Aritech stocks until they reached his target sales prices of \$25.00 and \$5.00, respectively. After receipt of the confirmation of these trades, Veldman called Raman on March 6, 1992, and was told that Vitesse would be \$30.00 per share by July 1992. Raman offered no other alternative to Veldman, but to hold onto the stock or take an immediate loss with no recompense. Veldman did not ratify the trades and complained to Raman about the unauthorized trades;

5. In mid March 1992, Veldman received a newsletter from Vitesse and first learned that the Vitesse stock was purchased through an initial public offering (IPO). In a subsequent newsletter in May 1992, Veldman learned that the initial offering price was approximately \$9.00 per share. In May 1992, Veldman began receiving margin calls largely due to the Vitesse stock purchase and had to sell many of his securities. Prior to the purchase of the Vitesse stock or the sale of Union Carbide and Aritech, Raman failed to consult Veldman and obtain his authorization as to the amount of the purchase and sales, the risk involved in an IPO, Prudential's role as a market maker for the Vitesse stock and did not provide Veldman with information on the Vitesse company either before or subsequent to the purchase. Upon receipt of the confirmation of the Vitesse purchase, the stock had already plummeted, forcing Veldman to liquidate other

holdings to meet his margin calls; and

6. Veldman alleged that Prudential and Tabit are responsible for Raman's and their conduct under the doctrine of Respondeat Superior and as control persons under the securities laws.

Based on the above allegations, Veldman asserted claims for unsuitability, negligence, gross, negligence, breach of fiduciary duty, breach of good faith and fair dealing, negligent supervision and failure to supervise, violation of Section 12(2) of the Securities Act of 1933, violation of Section 10(b) of the Securities Exchange Act of 1934, violation of Article 581 *et seq.* of Vernon's Civil Statutes and violation of Article 27.01 of the Texas Business & Commerce Code.

Respondents Prudential, Raman and Tabit denied the material allegations made by Veldman and alleged that Veldman was an experienced investor, aware of the risks and aware of the increase in the margin balance from receipt of the account statements. The Respondents alleged that both option account forms contained the same financial information and were signed and dated by the Claimant. The Respondents further alleged that Veldman, prior to the purchase date, expressed interest to Raman in the acquisition of Vitesse stock after the announcement of the earnings report and instructed Raman to acquire the stock if the price dropped below \$22.00 per share. Respondents further alleged that Veldman ratified the trade because his complaint was not made until July 1992 and after the decline in price.

RELIEF REQUESTED

Claimant Veldman requested an entry of an award against Respondents Prudential, Raman and Tabit in the sum of \$31,000.00 in actual damages, punitive damages in the amount of at least \$50,000, attorneys' fees, interest and costs of arbitration.

Respondents did not specify a relief request in the Statement of Answer, but at hearing requested that the claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On April 12, 1993, the Claimant's Motion to Preclude and Respondents' Motion to Change Situs were denied by the panel of Arbitrators.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities Incorporated and Krish Raman are jointly and severally liable for and shall pay to the Claimant Ray Veldman the sum of \$4,754.50 in actual damages;
2. Respondents Prudential Securities Incorporated and Krish Raman are jointly and severally liable for and shall pay to the Claimant Ray Veldman the sum of \$7,476.12 as attorneys' fees. In determining to award attorneys' fees to Claimant Ray Veldman, the panel considered the authorities cited in the Claimant's pleadings and the arguments in closing, and determined that the authority existed for an award of attorneys' fees in favor of the Claimant Ray Veldman;
3. Claimant Ray Veldman's request for punitive damages is hereby denied in its entirety;
4. The claims asserted against Respondent Mark Tabit are hereby dismissed and denied in their entirety; and
5. All other costs of arbitration, including attorneys' fees, shall be borne by the party incurring the cost, except for those specifically enumerated herein

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session x \$300.00 per session = \$300.00; Two (2) hearing session x \$500.00 per session = \$1,000.00; Total Forum fees = \$1,300.00.

The National Association of Securities Dealers, Inc. will retain the \$150.00 claim filing fee and refund the \$500.00 hearing session deposit previously deposited by the Claimant, Ray Veldman.

Respondents Prudential Securities Incorporated and Krish Raman are jointly and severally liable for and shall pay to the NASD the sum of \$1,300.00 for forum fees. In addition, Respondents Prudential Securities Incorporated and Krish Raman are jointly and severally liable for and shall pay to the Claimant, Ray Veldman, the sum of \$150.00 as reimbursement of the claim filing fee retained by the NASD.

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

Concurring Arbitrators' Signatures

Name

Date of Signature

s/Charles D. Powell, Esq.
Charles D. Powell, Esq.
Public Arbitrator
Chairperson

October 14, 1993

s/Russell F. Rains, Esq.
Russell F. Rains, Esq.
Public Arbitrator

October 13, 1993

s/James Mervin Benson, Jr., Esq.
James Mervin Benson, Jr., Esq.
Industry Arbitrator

October 13, 1993

For NASD Use Only

Date of Service of Award: 10-14-93