

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Harold Rostow

NASD Arbitration
No. 92-03691

Name of Respondent(s)

Prudential Securities Incorporated
William Creedon

REPRESENTATION

For Claimant: Harold Rostow, Esq., Encino, California and I. Reza Gharakhani, Esq., Law Offices of Andrew K. Kim, Los Angeles, California

For Respondent Prudential Securities Incorporated: Peter T. Kujawski, Esq., Prudential Securities Incorporated, New York, New York

For Respondent William Creedon: Gregory D. Wolflick, Esq., Wolflick & Simpson, Glendale, California

CASE INFORMATION

Statement of Claim filed: October 29, 1992

Claimant's Reply to Answer and Counterclaim filed: January 20, 1993

Claimant's Submission Agreement signed: September 28, 1992

Joint Statement of Answer and Counterclaim filed by Respondents: January 5, 1993

Motion to Amend Pleadings and add Motion to Dismiss filed: May 21, 1993

Gregory D. Wolflick's correspondence of July 12, 1993 relative to William Creedon's joining in Prudential Securities Incorporated's Motion to Amend Pleadings filed: July 12, 1993

Submission Agreement signed by Respondent Prudential Securities Incorporated: March 11, 1993

Respondent William Creedon did not file a Submission Agreement form. However, he appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

July 13, 1993 (one session)

October 25, 1993 (one session)

Hearing Date(s)/Session(s): November 4, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that on or about March 16, 1990, he instructed Respondent Creedon to place a freeze order on Claimant's joint tenant account until the property issues were resolved in the Rostow marital dissolution. Claimant further alleged that without authorization, Respondents distributed to Sharon Rostow \$15,000.00 from the subject account without Claimant's knowledge or consent. Claimant further alleged negligence, breach of oral contract and breach of fiduciary duty with respect to the aforementioned transaction.

Respondents denied each and every allegation contained in Claimant's Statement of Claim and alleged that Claimant did not place a freeze order on the joint tenant account. Respondents further alleged that they had written authority from Claimant to follow the instructions of either joint tenant in the event Respondents received a conflicting instruction (i.e., freeze order followed by a sell order or vice versa). Respondents also asserted affirmative defenses.

Respondents asserted a Counterclaim to recover attorney's fees plus such further exemplary and punitive damages for being compelled to defend Claimant's claims which Respondents alleged to be frivolous, meritless and fraudulent.

Claimant denied any liability to Respondents with respect to their Counterclaim for attorney's fees and alleged that this issue was adjudicated by the trial court that remanded Claimant's claims to arbitration.

RELIEF REQUESTED

Claimant requested damages in the amount of \$15,000.00 plus interest in the amount of 10% from March 22, 1990 to date and requested costs.

Respondents requested dismissal of Claimant's claims and requested attorney's fees in the amount of \$11,858.63 plus costs.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing and prior to withdrawing as presiding arbitrator, Herman R. Friedberg, Esq. reviewed and considered the written and oral positions of the parties relative to Respondents' Motion to Dismiss. Mr. Friedberg denied the Motion.

AWARD

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

1. All claims by Claimant are dismissed.
2. All claims by Respondents are dismissed.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$300.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against:

Claimant Harold Rostow in the amount of \$300.00, calculated as follows: Two hearing sessions times \$300.00/session, minus the \$300.00 hearing deposit retained by the NASD. No forum fees are assessed in connection with the pre-hearing conferences.

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

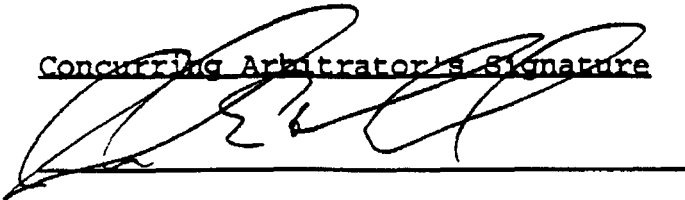
ARBITRATOR

Name _____ Public / Industry

John E. Ohashi, Esq.

Public Arbitrator

Concurring Arbitrator's Signature



Date of Decision: 12/6/93

Served 12/8/93