

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jack Price

92-04369

Names of Respondents

Prudential-Bache Securities Inc., n/k/a  
Prudential Securities, Inc., and  
Anthony J. Parisi

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**REPRESENTATION**

Claimant, Jack Price appeared pro se.

Respondent, Prudential Securities, Inc. was represented by Robin Nackman, Esq. of Prudential Securities, Inc., New York, New York.

Respondent, Anthony J. Parisi did not file an appearance.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 31, 1992.

Claimant, Jack Price's Submission Agreement was signed on December 16, 1993.

The Statement of Answer and Counterclaim was filed with the NASD by Respondent, Prudential Securities, Inc. on February 23, 1993.

Respondent, Prudential Securities, Inc.'s Submission Agreement was signed on February 26, 1993 by Edward Samson, First Vice President, Prudential Securities, Inc.

Respondent, Anthony J. Parisi did not file either an Answer to the Statement of Claim or an executed Submission Agreement with the NASD.

Claimant. Jack Price filed a response to the Counterclaim with the NASD on April 27, 1993.

### **HEARING INFORMATION**

A telephonic pre-hearing conference lasting for one (1) hearing session was held with the panel chairperson on October 14, 1993.

The hearing was held on October 19, 1993 and the hearing lasted for two (2) hearing sessions.

The hearing location was Scottsdale, Arizona.

### **CASE SUMMARY**

Claimant, Jack Price ("Price") alleged that Respondent, Anthony J. Parisi ("Parisi") who was employed by Respondent, Prudential Securities, Inc. ("Prudential") advised Price on October 13, 1988 to sell \$23,000.00 of zero coupon United States Bonds which were held in Price's IRA account for a purported loan from Price to Prudential at the rate of 12% guaranteed interest. Parisi asserted that Prudential would invest the money in VMS Realty Fund and that the investment was sound and without risk of loss.

Prudential alleged that Price was barred from bringing his claim by virtue of a class action settlement In Re VMS Securities Litigation, Case No. 89-C9448 (N.D. Ill. 1991) as Price was a member of the class and failed to "opt out" of the class. Prudential asserted a Counterclaim for a debit balance in his account caused by Prudential's sale of 2000 shares of International Thoroughbred common stock at \$4.75 per share. Prudential stated that after the sale, it was discovered that the stock had split and was worth much less than what it was sold for.

### **RELIEF REQUESTED**

Price requested \$23,000.00 actual damages, plus interest at 12% from 10/14/1899 to 10/14/1992 in the amount of \$13,190.93, plus \$23,000.00 in punitive damages, costs, fees and additional interest at the rate of 12% from 10/14/1992 until the award is paid.

Prudential requested dismissal of the claim in its entirety and an award on its Counterclaim in the amount of \$2,042.75, filing fees, attorney's fees and

travel expenses.

Price requested dismissal of the Counterclaim.

Parisi did not file an Answer with affirmative relief requests for the panel to consider.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel went forward with the hearing in the absence of Parisi pursuant to Section 29 of the NASD Code of Arbitration Procedure ("NASD Code") since he was obligated to arbitrate this matter pursuant to Section 12 of the NASD Code. The panel believed that Parisi had notice of the claim and hearing date pursuant to Sections 25 and 26 of the NASD Code.

Prudential's counsel moved to strike the name of Prudential-Bache Securities and substitute the name of Prudential Securities, Inc. which motion was granted by the arbitration panel.

At the close of Price's presentation of evidence, and again at the conclusion of all the evidence in the case, Prudential's counsel moved for dismissal of Price's answer to the Counterclaim on the ground that it was not filed timely. The panel took this motion under advisement.

Prudential further moved for summary judgment as to Price's Statement of Claim on the grounds that Price was a member of the class who failed to opt out of the class action of In Re VMS Securities Litigation, No. 89-C9448 (N.D. Ill. 1991). The panel also took this motion under advisement.

Prudential further moved for summary judgment as to its Counterclaim against Price on the grounds that under the evidence, Price had unjustly profited from the sale of 2000 common shares of International Thoroughbred Breeders, Inc., when in fact Price was the owner of only 100 shares of said stock. The panel also took this motion under advisement.

The parties who appeared at the hearing 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. All three motions taken under advisement at the hearing by the arbitration panel are hereby denied;
2. The claim asserted against Parisi and Prudential is and shall be denied and dismissed in its entirety;
3. Prudential's Counterclaim asserted against Price is and shall be denied and dismissed in its entirety; and,
4. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$120.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously paid to the NASD by Price. The NASD shall also retain the \$500.00 non-refundable Counterclaim filing fee and the \$300.00 hearing session deposit previously paid to the NASD by Prudential. Prudential is assessed additional Forum Fees in the amount of \$500.00.

Forum Fees were calculated at the rate of \$500.00 per hearing session for two (2) hearing sessions on October 19, 1993 and \$300.00 for the pre-hearing conference held on October 14, 1993 on Prudential's motion.

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Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**  
**Name**

<u>/S/ Charles A. Finch</u>	<u>November 1, 1993</u>
Charles A. Finch, Esq.	Dated
Presiding Chairperson	
Public Arbitrator	

<u>/S/ Steven M. Vakula</u>	<u>October 28, 1993</u>
Steven M. Vakula	Dated
Panelist	
Public Arbitrator	

<u>/S/ William J. Wood</u>	<u>November 22, 1993</u>
William J. Wood	Dated
Panelist	
Industry Arbitrator	

Date Award Served on the Parties by the NASD: November 30, 1993