

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harold and Shirley Ross, ttees.

93-00483

Name of Respondents

Prudential Securities, Inc.
Gruntal & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 9, 1993, Claimants Harold and Shirley Ross, who appeared Pro Se, alleged that Respondents Gruntal & Co., Inc. and Prudential Securities, Inc. misplaced 400 shares of Boeing stock they owned and were transferring from their bank in Switzerland to their current broker. The Claimants further alleged that when the shares were finally located in December 1991, the Claimants sold them at a price which was lower than they would have sold them at had they not been lost. The Claimants contended that they are entitled to recover profits lost due to the negligence of the Respondents.

Respondent Prudential Securities, Inc., through its in-house counsel, Joel Levinson, Esq., maintained that the Claimants fail to mention that they actually sold their shares on January 7, 1992 at \$48.00, not in December, 1991 at \$41 3/8, and that, therefore, their alleged damages should not exceed \$350.00. The Respondent further maintained that Kennedy, Cabot & Co., Inc. has admitted to receiving the shares, but they weren't reflected in the Claimants' account until December 4, 1991, and contended that it committed no wrong and should not be held liable in this matter.

Respondent Gruntal & Co., Inc., through its in-house counsel, Emilia M. DeMeo, Esq., maintained that it has no liability in this matter, since Prudential Securities, Inc. delivered 400 shares of Boeing stock to it without indicating an account number, and therefore it had no way of knowing that the stock belonged to the Claimants. The Respondent contended that when the shares were located they were credited to the correct account along with dividends that had been earned, and therefore the Claimants were not damaged.

RELIEF REQUESTED

Claimants Harold & Shirley Ross requested \$3,000.00 in actual damages, plus interest.

Respondent Gruntal & Co., Inc. requested that the claims of the Claimants be dismissed.

Respondent Prudential Securities, Inc. requested that the claims of the Claimants be dismissed, and it be awarded \$250.00 in attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Delores I. Smith, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 5, 1993, by the Respondent Prudential Securities, Inc. on April 15, 1993, and by the Respondent Gruntal & Co., Inc. on April 5, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Harold & Shirley Ross against Respondent Gruntal & Co., Inc. are dismissed in their entirety.
2. Respondent Prudential Securities, Inc. is liable and shall pay \$350.00 in actual damages to the Claimants Harold & Shirley Ross.
3. Respondent Prudential Securities, Inc. is liable and shall pay to the Claimants Harold & Shirley Ross simple interest at the current legal statutory rate for the state of California from August 21, 1991 to the date of payment of the award.
4. The parties shall bear their respective costs and attorney's fees.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Prudential Securities, Inc. is liable and shall pay \$125.00 to the Claimants as reimbursement.

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AFFIRMATION

I, **DELORES I. SMITH, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Delores I. Smith, Esq.
Signature of Arbitrator

DATE OF DECISION: October 27, 1993