

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Luis Miguel Aguilar

93-00695

Name of Respondents

Prudential Securities Incorporated;  
Joseph M. Sullivan

---

**REPRESENTATION**

For Claimant: Luis Miguel Aguilar ("Aguilar") was represented by William S. Shepherd, Esq. of Houston, Texas.

For Respondents: Prudential Securities Incorporated ("Prudential") and Joseph M. Sullivan ("Sullivan") were represented by Peter Byer, Esq. of Prudential Securities Incorporated, New York, New York.

**CASE INFORMATION**

Statement of Claim filed: February 25, 1993.

Claimant's Submission Agreement signed on: February 1, 1993.

Statement of Answer filed by Respondent Prudential and Sullivan on: July 7, 1993.

Respondent Prudential's Submission Agreement signed on: July 2, 1993 by Peter Byer, Vice-President, Prudential Securities Incorporated.

Respondent Sullivan's Submission Agreement signed on: July 8, 1993.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: February 16, 1994 for Two (2) sessions;  
February 17, 1994 for Two (2) sessions.  
  
Hearing Location: Houston, Texas.

### **CASE SUMMARY**

Claimant Aguilar alleged that Respondent Sullivan, while employed by or acting as an agent for Respondent Prudential, engaged in unsuitable and unauthorized transactions in his account. Aguilar specifically alleged that:

1. Aguilar opened his account with Prudential in March of 1987. Initially his account was handled in a generally prudent manner as he had instructed;
2. In July of 1988, Sullivan was assigned to the account and its direction of the account changed dramatically. Sullivan began making leveraged purchased and sales short term on margin, and stock and index options began to be traded. This was contrary to Aguilar's stated goals and objectives. Because of the way the account was established, information did not reach Aguilar for several months;
3. Sullivan maintained a degree of control over the account and began making excessive trades in order to benefit himself and others; and
4. 2,400 shares of Apple Computer Corporation and Ferro Corporation common stock were sold without authorization.

Based upon the above allegations, Aguilar asserted claims for violation of the Federal securities laws and regulations, including Section 10(b) of the Securities and Exchange Act of 1934; violation of the NASD, NYSE and SEC rules and regulations; violation of 18 U.S.C. Sec. 1341, the Federal Mail Fraud Statute and 18 U.S.C. Sec. 1463, the Federal Wire Fraud Act; violation of the State securities laws; common law fraud; statutory fraud; Deceptive Trade and Consumer Fraud Statutes; misrepresentation; breach of contract and of warranty; and breach of fiduciary duty.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Aguilar began utilizing margin to purchase numerous over-the-counter stocks

as early as September of 1987;

2. Aguilar signed an option agreement in January of 1988 indicating that he had substantial income and net worth, was an experienced investor, and was approved for all types of options transactions;
3. From late July of 1988, when Sullivan was assigned to the account, through January of 1989, there were only three transactions in the account;
4. In mid-February, 1989, Aguilar informed Sullivan that he desired to increase his net worth by aggressively trading the account. Several sales and purchases were made pursuant to Sullivan's recommendations in February and March, 1989;
5. Aguilar was hard to contact because he resided in Mexico and traveled for his business. However, no unauthorized trading took place. Instead, Sullivan discussed with Aguilar the specific stocks to be sold and acquired and then exercised time and price discretion as permitted under the rules of the NASD and the NYSE;
6. In March of 1989, Aguilar transferred the account to another Prudential office, where the debit balance in the account increased greatly and the trading activity continued, including the selling of options by July of 1990; and
7. The actual out-of-pocket loss suffered by Aguilar amounts to \$11,417.65, which was due to market forces beyond the control of the Respondents.

#### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents for actual damages in the sum of \$76,484.00; statutory trebling of damages pursuant to 18 U.S.C. 1964(c) or multiple damages as proscribed under the state laws and statutes; attorneys' fees and costs under 18 U.S.C. 1964(c) and the states laws and statutes; pre-award and judgment interest; post award and judgement interest; interest and attorneys' fees; punitive damages in the discretion of the Panel as proscribed under applicable law and statute; and any other relief that Claimant showed himself entitled.

Respondents requested that the claim be dismissed in its entirety.

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

1. Respondents Prudential Securities Incorporated and Joseph M. Sullivan are jointly and severally liable for and shall pay to Claimant Luis Miguel Aguilar the sum of \$28,725.00 as actual damages, plus interest in the sum of \$10,025.00;
2. In addition, Respondents Prudential Securities Incorporated and Joseph M. Sullivan are jointly and severally liable for and shall pay to Claimant Luis Miguel Aguilar the sum of \$19,375.00 as attorneys' fees. In determining to award attorneys' fees, the Panel considered the arguments of the parties, as well as Texas Civil Practices and Remedies Code §38.001, and determined that authority existed for an award of attorneys' fees to Claimant;
3. Furthermore, Respondents Prudential Securities Incorporated and Joseph M. Sullivan are jointly and severally liable for and shall pay to Claimant Luis Miguel Aguilar the sum of \$3,250.00 as costs of suit;
4. The claims for punitive and treble damages are hereby dismissed and denied;  
and
5. Any relief not specifically granted is hereby denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$750.00 per session = \$3,000.00.

The National Association of securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Luis Miguel Aguilar.

Respondents Prudential Securities Incorporated and Joseph M. Sullivan are liable for and shall pay to Claimant Luis Miguel Aguilar the sum of \$950.00 as reimbursement of the claim filing fee and hearing session deposit previously deposited by Claimant. In addition, Respondents Prudential Securities Incorporated and Joseph M. Sullivan are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$2,250.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Martha Failing, Esq.

May 9, 1994

Martha Failing, Esq.

Public Arbitrator

Chairperson

/s/ Judith A. Swinney, Esq.

May 9, 1994

Judith A. Swinney, Esq.

Public Arbitrator

/s/ Stuart Hellmann

May 9, 1994

Stuart Hellmann

Industry Arbitrator

For NASD Use Only

Date of Decision: 5-11-94