

7/95

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Richard and Katherine Simon, et al.

NASD Arbitration
No. 93-01588

Name of Respondents

→ Prudential Securities, Inc.
Holford Securities (U.S.), Inc.
Gerald H. Klein

REPRESENTATION

For Claimants: Edward Russey, Esq., Greenbaum and Ferentz,
Newport Beach, California.

For Respondent Prudential Securities, Inc.:

William Cassarini, Esq. - Prudential Securities, Inc.
New York, New York

For Respondent Gerald Klein:

W. Douglas Kari, Orrick, Herrington & Sutcliffe,
Los Angeles, California

For Respondent Holford Securities (U.S.), Inc.:

J.K. Elliot - Holford Securities (U.S.),
Laguna Hills, California

CASE INFORMATION

Statement of Claim filed: April 20, 1993

Claimants' Submission Agreement signed: March 31, 1993

First Amended Statement of Claim filed: July 19, 1993

Statement of Answer filed by Respondent Prudential Securities Inc.: July 6, 1993

Statement of Answer to First Amended Statement of Claim file by Respondent Prudential Securities, Inc.: August 2, 1993

Statement of Answer to First Amended Statement of Claim filed by Respondent Gerald Klein: November 4, 1993

Respondent Holford Securities (U.S.), Inc. did not file an answer or a Submission Agreement.

Respondent Prudential Securities, Inc.'s Submission Agreement signed: July 6, 1993

Respondent Gerald H. Klein's Submission Agreement signed: July 26, 1993

HEARING INFORMATION

Hearing Dates / Sessions: April 26, 1995 - Two Sessions
 April 27, 1995 - Two Sessions
 April 29, 1995 - Two Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant Richard Simon met Respondent Gerald H. Klein in May 1987, when Mr. Klein worked at Prudential-Bache Securities, Respondents' predecessor. The Simons had two trusts: The Richard V. Simon separate property trust dated May 1986, and the Richard V. Simon separate property trust dated May 1987. These accounts were opened in Prudential's Newport Beach, California office where Mr. Klein worked.

Claimants were apparently satisfied for a few years, but state that they began to notice that more trades were occurring in their accounts in 1988 and 1989. At this time, Claimants alleged that Mr. Klein encouraged them to set up a discretionary account. This was the so-called "quantum" wrap fee account described below. This was done and there was excessive trading

according to Claimants.

In September 1990, Mr. Simon, Respondent and others attempted to establish a separate brokerage venture called "Holford Securities, Inc." Mr. Klein left Prudential and Claimants transferred their account there. After September 1990, Claimants became upset with what they described as margin calls and loss of income in the accounts.

Claimants alleged unsuitable investments, failure to supervise, churning, breach of fiduciary duty, fraud, negligence, breach of implied covenants of good faith and dealing and violation of the rules and regulations or the customs and usages of the various exchanges to which they belong which conduct caused damage to the Simons.

Respondent Gerald H. Klein ("Klein") responded generally by stating that Claimants failed to state a claim and generally denied all material allegations. Respondent Klein further alleged that Richard Simon was sophisticated and that all securities transactions handled for or on behalf of Claimants by Klein before and after the transfer to Holford were handled properly and after consultation with Claimants and were consistent with Claimants' investment objectives and expectations. Respondent Klein further alleged that there was no "churning" of the Simons' accounts, and that all investments were suitable. Additional defenses in avoidance are contained in Respondent Klein's Statement of Answer.

Respondent Prudential Securities, Inc. ("Prudential"), defended on the ground that all three of Claimants' accounts were properly managed and actually profitable. One of the Simons' accounts was a "wrap fee" account (a product which Prudential called "Quantum account") and no commissions were charged and therefore there was no churning. Prudential also defended on the grounds that the other two accounts in the names of family trusts were not discretionary in nature, and for the time period during which the accounts were Prudential (from September, 1986 to September, 1990), Claimants realized profits of \$21,201.08. As to the Quantum account, Respondents alleged that Claimants realized profits of \$14,238.12. Prudential says Claimants realized a net gain of \$94,231.06 during this time.

RELIEF REQUESTED

Claimants seek to recover monetary damages of at least \$167,000.00, lost profits, interest, punitive damages, costs and fees.

Respondent, Gerald H. Klein, seeks dismissal of all claims against him, costs and fees.

Respondent, Prudential Securities, Inc., seeks dismissal of the claim in its entirety plus costs and fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Holford Securities (U.S.), Inc., was briefly present on the first day of the hearing. The panel was informed that Holford Securities (U.S.), Inc. is a defunct entity and Claimant did not proceed against said Respondent.

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 original remains 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. Each and every claim of Claimants, Richard and Katherine Simon, individually and as trustees against Respondent Prudential Securities, Inc., is dismissed.
2. Each and every claim of Claimants, Richard and Katherine Simon, individually and as trustees against Respondent, Gerald H. Klein, is dismissed.
3. The parties shall each bear their respective costs and fees including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$750.00 non-refundable fee paid by the Claimants.

Six hearing sessions @ \$750.00/session	\$4,500.00
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Claimants are jointly and severally assessed:	\$4,500.00
<u>Less Credit for Deposit:</u>	<u>750.00</u>
Total Fees:	\$3,750.00

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

ARBITRATORS

Name Public / Industry

Thomas E. Shuck

Public Arbitrator

Alvin S. Milder

Public Arbitrator

Robert B. Dunlap

Industry Arbitrator

Concurring Arbitrators' Signatures


Thomas E. Shuck

Alvin S. Milder

Robert B. Dunlap

Date Served: 7/18/95