

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Paul R. Kessel

93-01798

Name of Respondent

Prudential Securities Incorporated

REPRESENTATION OF PARTIES

Claimant Paul R. Kessel ("Kessel") was represented at the hearing by Dale West, Esq. of North Little Rock, Arkansas.

Respondent Prudential Securities Incorporated ("Prudential") was represented at the hearing by Kevin A. Crass, Esq. of Friday, Eldredge & Clark, of Little Rock, Arkansas.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant Kessel on May 3, 1993. The Uniform Submission Agreement signed by Kessel on April 30, 1993.

The Statement of Answer was filed by Respondent Prudential on June 11, 1993. The Uniform Submission Agreement was signed by Paul Giappone, Vice President, on behalf of Prudential on June 10, 1993.

A Response to Motion to Dismiss was filed with the NASD by Claimant Kessel on July 6, 1993.

An Amended Statement of Facts was filed with the NASD by Claimant Kessel on September 20, 1994.

HEARING INFORMATION

The hearing was held on October 12, 1994 in Little Rock, Arkansas for a total of two (2) hearing sessions.

CASE SUMMARY

Claimant Kessel alleged in his Statement of Claim that, during October of 1987, in connection with his purchase of XMZ Nov. 475 Puts and XMZ Nov. 435 Puts, Respondent Prudential: improperly froze Kessel's account without written notice; failed to issue written margin calls; incorrectly issued verbal margin calls; improperly placed a stop payment on a cashier's check issued by Prudential to Kessel; removed profitable trades from Kessel's account and retained the profits; failed to consider cash and other securities held in safekeeping by Prudential in Kessel's other accounts when computing account equity, resulting in the unnecessary closing out of open positions in XMZ Puts at a loss; and failed to credit all deposits made by Kessel to his account. Claimant Kessel requested actual and punitive damages, in addition to reasonable costs.

Respondent Prudential in its Answer denied each and every substantive allegation contained in the Claim. Prudential stated affirmatively that Kessel failed to state a claim upon which relief may be granted, in that by Order dated March 31, 1992, the United States District Court for the Eastern District of Arkansas ("the District Court") granted Prudential's Motion to Dismiss on the basis that the action was brought beyond the applicable statute of limitations. Prudential further asserted that by Order dated January 13, 1993, the District Court reinstated the contract claim only, and requested that the panel dismiss Kessel's claim for punitive damages.

In his Response to Prudential's answer, Claimant Kessel asserted that this case was dismissed by the District Court without prejudice, and requested that punitive damages be allowed.

Claimant Kessel alleged in his Amended Statement of Facts, that Respondent Prudential converted \$77,000 of Kessel's money under the guise of a trade cancellation, resulting in lost investment opportunities. Kessel further alleged that Prudential closed out account positions in an untimely fashion and without his permission, resulting in a loss of \$40,000.

RELIEF REQUESTED

Claimant Kessel, in his Amended Statement of Facts requested:

1. \$117,000 in out-of-pocket damages;
2. \$154,000 in lost investment opportunities;
3. \$16,500 in costs, expert witness fees, and attorney's fees;
4. and such other relief that the arbitrators see fit to grant.

Respondent Prudential requested that the Statement of Claim be dismissed, and that it be awarded attorneys' fees and all other proper relief.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

At the start of the hearing, after the parties and their counsel identified themselves for the record, the Chair disclosed a prior business relationship with Mr. Larry Legal, who was appearing as an expert witness for Claimant. The Chair explained this relationship in detail and stated that he would be able to decide this case without any bias. Respondent then objected to the Chair sitting on the panel. The panel then asked the parties whether they would consider continuing the hearing with two arbitrators. Claimant objected to this suggestion. The panel then called for an Executive Session. After carefully considering the matter, the Chair determined that the reason for the challenge was not substantial, and that he could nevertheless act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense. The Chair noted that the hearing in this matter had been postponed on three occasions, and that the issues in controversy occurred approximately seven years ago.

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. Respondent, Prudential Securities Incorporated, shall be liable for, and shall pay to Claimant, Paul R. Kessel, damages for out-of-pocket losses in the amount of Thirty Two Thousand Twenty Three Dollars and No Cents. (\$32,023.00).
2. Respondent, Prudential Securities Incorporated, shall be liable for, and shall pay to Claimant, Paul R. Kessel, interest in the amount of Thirteen Thousand Four Hundred Forty Seven Dollars and No Cents. (\$13,447.00).
3. Respondent, Prudential Securities Incorporated, shall be liable for, and shall pay to Claimant, Paul R. Kessel, attorneys' fees in the amount of seven Thousand Five Hundred Dollars and No Cents. (\$7,500.00).
4. Respondent, Prudential Securities Incorporated, shall be liable for, and shall pay to Claimant, Paul R. Kessel, the sum of Six Hundred Fifty Dollars and No Cents (\$650.00) as reimbursement for the filing fee and hearing session deposit previously paid to the NASD by Claimant.
5. Any relief not specifically provided for herein is denied.

FORUM FEES

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions x \$500 = \$1,000.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150, and the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimant.

The panel has ordered that the additional forum fees in the amount of \$500 shall be paid by the Respondent.

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

By The Arbitration Panel:

Dated:

October 19, 1994

Richard C. Downing /s/
Richard C. Downing, Esq., Presiding
Public Arbitrator

October 18, 1994

H. Baker Kurrus /s/
H. Baker Kurrus, Esq.
Public Arbitrator

October 19, 1994

Richard D. Bingham /s/
Richard D. Bingham
Industry Arbitrator

Date Award Served By The NASD: 10-26-94