

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard T. and Sarah E. McGuerty

93-02128

Name of Respondents

Prudential Securities, Inc.
David R. Schultz

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 27, 1993, Claimants Richard T. and Sarah E. McGuerty, who appeared Pro Se, alleged that Respondent David R. Schultz, through the Respondent firm Prudential Securities, Inc., misled them into trading options, which were not suitable considering their age and investment objectives. The Claimants further alleged that Respondent Prudential Securities, Inc. failed to supervise its representative, Respondent David R. Schultz, and that excessive fees were charged to their account, as well as excessive commissions. The Claimants contended that because of an unprofessional investment approach by an unsupervised broker, they have suffered damages for which the Respondents should be held liable.

Respondent Prudential Securities, Inc., through its in-house counsel, Joel Levinson, Esq., maintained that the Claimants were experienced investors who were suitable for option trading and were well aware of the risks involved, and that these risks were explained to them by their broker, Respondent David R. Schultz. The Respondent Prudential Securities, Inc. further maintained that the Claimants' account was properly handled, and was not overtraded, the commissions were reasonable for this type of account, and further maintained that the Claimants ratified the option trading activity in the account by allowing the trades to go forward without question. Respondent Prudential Securities, Inc. contended that they should not be held liable in this matter.

Respondent David R. Schultz, through his counsel Anthony W. Djinis, Esq. of Pickard & Djinis, Washington, DC, maintained that a careful examination and analysis of the submissions filed would reflect that the Claimants contacted him and asked to trade options, and that the Claimants in fact had sufficient investment knowledge, experience and financial status in order to trade options, and therefore these options were suitable investments. The Respondent David R. Schultz contended that he is an honest, straightforward, ethical and hardworking broker who at all times acted in the best interest of his clients, and therefore he should not be held liable in this matter.

In a reply to the Statement of Answer of Respondent Prudential Securities, Inc., the Claimants refuted the defenses used by this Respondent and again requested they be compensated for damages they have suffered.

RELIEF REQUESTED

Claimants Richard T. and Sarah E. McGuerty (JTWROS) requested \$8,638.00 in actual damages.

Respondent Prudential Securities, Inc. requested that the claims of the Claimants be dismissed.

Respondent David R. Schultz requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerry M. Hamovit, 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 May 20, 1993, by the Respondent Prudential Securities, Inc. on August 9, 1993 and by Respondent David R. Schultz on July 20, 1993.

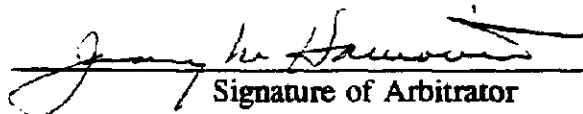
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. and David R. Schultz are jointly and severally liable and shall pay to Claimants Richard T. and Sarah E. McGuerty \$4,174.00 in actual damages, plus simple interest at the rate of 8% per annum from August 31, 1992 to the date of payment of the award.
2. The parties shall bear their respective costs and attorney's fees.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Prudential Securities, Inc. and David R. Schultz are jointly and severally liable and shall pay \$150.00 to the Claimants as reimbursement of the fee.

AFFIRMATION

I, JERRY M. HAMOVIT, 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.



Signature of Arbitrator

DATE OF DECISION: December 14, 1993
