

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Prudential Securities Inc.

93-02206

Name of Respondent(s)

Golden Capital Management, Inc.

REPRESENTATION

For Claimant Prudential Securities, Inc.: David W. Schmidt, Esq., and David Simon, Esq. of the law firm of David W. Schmidt, New York City, NY.

The Respondent did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: June 1, 1993.

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

Statement of Answer to Respondent's Third Party Statement of Claim and Response to Counterclaim filed: January 27, 1994.

Statement of Answer and Third Party Statement of Claim filed by Respondent Golden Capital Management, Inc. on: September 22, 1993.

Respondent Golden Capital Management, Inc.'s Submission Agreement signed on: October 21, 1993.

HEARING INFORMATION

Pre-hearing conference: September 12, 1994

Hearing Date/Session:

November 7, 1994 / One Session

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that Respondent opened and maintained a securities account with Prudential Securities, Inc. which was opened on or about October 1992 and the President of Golden Capital Management, Inc. ("Golden") is Robert Leben ("Leben") a sophisticated securities and bond trader who was supplied with a direct telephone line to the branch office as well as a quotron to facilitate his numerous trades. Claimant further alleged on March 17, 1993 just after the opening of the Government Bond Market, Leben spoke with Prudential Securities, Inc.'s financial advisor Hank Werner, ("Werner"), and placed an unsolicited order to sell short 5,000,000 US Treasury Bonds 7 1/8, 02/15/2023 and the order was placed directly between Werner and the NY Government Bond Desk, and the price received at the time of the trade was 102 13/32. Claimant further alleged Werner told Leben what the final execution was on the trade and later Leben called and complained that this execution price was low and Werner again called the government bond desk, and the desk agreed to modify Leben's execution price to the last sale of 102 17/32 due to the fact that Leben was an active trader of government bonds.

Claimant further alleged later that morning, Leben called Werner's sales assistant and placed an order for 2,000,000 US Treasury Bonds 7 1/8, 02/15/2023 and the sales assistant asked Leben if this trade was in any way related to the earlier 5,000,000 trade, at which point Leben said he was not recognizing the 5,000,000 trade.

Claimant further alleged when Werner heard this he attempted to contact Leben by phone, calling his office and leaving several messages, calling his two car phones, and calling his home in Vermont and calls were placed from approximately 10:45 A.M. until 8:50 P.M., but there was no response from Leben and the next morning, March 18, 1993, Branch Manager Martin Berman contacted the client to notify him that the trade was in the account, and that it had been moving against Golden and Leben promised to call Berman back with instructions, but failed to do so and finally Berman contacted Leben again, and only then did Leben state that he would not honor the trade.

Claimant further alleged the short 5,000,000 bond position was bought in at 104 4/32, resulting in a loss of \$79,109.11 and the short 2,000,000 bond position was also bought in at a loss of \$7,581.14 and as a result of the foregoing transactions,

and the circumstances set forth above, there was and is a total debit in the Golden Capital Management account of \$86,690.25 which the Respondent has refused to pay.

Respondent maintained the trades at issue were to be for the account of Beta Asset Management, Inc. ("BETA") and further maintained on or about March 17, 1993, Robert Leben, President of BETA, placed an order to sell \$5 million U.S. Treasury Bonds (7 1/8s of 2/15/23) and BETA was bid 102 13/32 for these bonds when the market was 102/22/32 and BETA accepted the bid on the assumption that the market had broken support which in fact was not the case and BETA complained about the price and was offered a price of 102 17/32 and the bonds in fact never traded at 102 13/32 or 102 17/32 for that matter, and BETA would not have agreed to 102 17/32 in light of technical indicators in the market. Respondent further maintained BETA advised its broker that he would not accept the price of 102 17/32 and to cancel or cover the trade and at this time, the market was approximately 102 24/32 - 102/26/32.

Respondent further maintained BETA later placed an order to sell 2 million of these same bonds short at 103 13/32 believing that his original order was covered and that same afternoon, BETA left an order to cover at 103 9/32 and that market closed at 103 8/32.

Respondent further maintained BETA's order to cover the first \$5 million bonds was never executed and his second order to cover \$2 million bonds was likewise not covered although he was entitled to an execution (the bonds traded below BETA's limit).

Respondent further maintained on March 18, 1993, prior to being informed that the foregoing positions were not covered, BETA went long \$1 million bonds and BETA later instructed agents of Prudential Securities, Inc. to sell these bonds (which would have been done at a profit) and was advised for the first time that its \$1 million purchase was used to partially cover a then outstanding \$7 million short position and BETA, by and through its agents, objected and upon information and belief, the remaining short position was covered at 104 2/32.

Respondent further maintained as a result of the foregoing, and the failure of Prudential by and through its agents to execute orders duly entered, Claimant has suffered losses in that an unsecured debit remains in the account and additional damages have been suffered representing profits that should have been made had the trades been executed in accordance with BETA's instructions.

BETA asserted two additional third party causes of action and/or right of set off and then withdrew all claims of Beta Asset Management without prejudice in a letter dated March 1, 1994.

In response, the Claimant maintained in an effort to avoid personal responsibility for the losses detailed in the Statement of Claim, Mr. Leben seeks to transfer these transactions from Golden Capital Management, Inc. which on information and belief represented his personal assets to Beta Asset Management, Inc. an entity containing the capital of other investors and requested that the panel assess the responsibility for the losses where they belong with Golden Capital Management, Inc.

RELIEF REQUESTED

Claimant requested damages of \$86,690.25 with interest from March 18, 1993 until the date of payment plus the costs necessitated by commencing the arbitration proceeding.

Respondent requested an award dismissing the Statement of Claim and such other and further relief as the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings with respect to the Respondent:

1. Pursuant to the bylaws of the NASD, the arbitrators determined that the Respondent was required to submit to this arbitration and therefore, was bound by this panel's rulings and determinations.
2. In accordance with Section 25 of the Code, the Respondent was served with the Statement of Claim and given an opportunity to respond which it did;
3. In accordance with Section 21 and Section 26 of the Code, the Respondent was given due notice of the hearing procedure by regular and certified mail and failed to appear at the evidentiary hearing; and,
4. In accordance with Section 29 of the Code, the arbitration panel determined in light of the foregoing information to proceed with the Respondent as a party.

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:

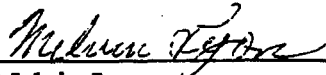
1. The Respondent Golden Capital Management, Inc. be and hereby is liable and shall pay to the Claimant Prudential Securities, Inc. the sum of \$86,690.25 plus simple interest at the rate of 8% per annum from March 18, 1993 until the date of payment of the award.
2. All claims by Respondent Golden Capital Management, Inc. are denied.
3. Each party shall bear their respective costs including attorneys' fees.

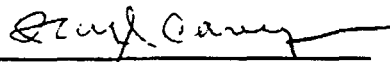
FORUM FEES

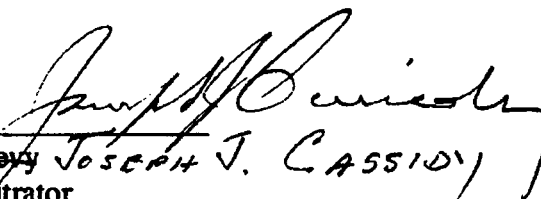
Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Pre-hearing (\$300.00) + 1 session (\$600.00) = \$900.00
less Claimant's hearing session deposit less Respondent's
hearing session deposit = net \$0 due.

ARBITRATORS' SIGNATURE


Melvin Lyon
Public Arbitrator


Neil J. Carey
Public Arbitrator


~~Jerome H. Levy~~ JOSEPH J. CASSIDY
Industry Arbitrator

Date of Decision: December 6, 1994

STATE OF:

SS:

COUNTY OF:

On this 16th day of November, 1994, before me personally appeared Melvin Lyon known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Hilda Magan
HILDA MAGAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 31, 1998
STATE OF: CONNECTICUT

SS: STAMFORD

COUNTY OF: FAIRFIELD

On this 29 day of November, 1994, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

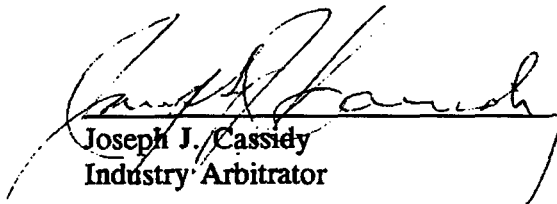
Cheryl L. Gardner
CHERYL L. GARDNER
My Commission Expires 6/30/98
STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared Jerome H. Levy known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

ARBITRATOR'S SIGNATURE

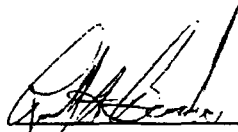

Joseph J. Cassidy
Industry Arbitrator

Date of Decision: December 6, 1994
STATE OF *NEW YORK*

SS:

COUNTY OF *NASSAU*

On this *25* day of *NOVEMBER*, 1994, before me personally appeared Joseph J. Cassidy known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



RONALD A. BEAUDRIE
Notary Public, State of New York
No. 4920670
Qualified in Nassau County
Commission Expires February 16, 1996