

PUBLIC

In the Matter of the Arbitration Between

Vernon Hickinson

Name of Respondent(s)

Prudential Securities Inc

For Claimant Vernon Dickinson: Daniel A. Lowenthal, III, Esq. of the law firm of Winthrop, Stimson, Putnam and Roberts, New York City, NY.

For Respondent Prudential Securities, Inc.: James M. Bergen, Esq. of the law firm of Dorsey and Whitney, New York City, NY.

Statement of Claim filed: June 24, 1993.

Claimant's Submission Agreement signed on: June 8, 1993.

Statement of Answer filed by Respondent Prudential Securities, Inc. on: September 17, 1993.

Respondent Prudential Securities, Inc.'s Submission Agreement signed on: September 17, 1993.

Hearing Dates/Sessions: April 25, 1994 / Two Sessions
April 26, 1994 / Two Sessions
April 28, 1994 / One Session
April 29, 1994 / Two Sessions
January 16, 1995 / Two Sessions
January 17, 1995 / Two Sessions
January 18, 1995 / Two Sessions

January 19, 1995 / Two Sessions

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

CASE INFORMATION

Claimant alleged that in 1985, Claimant a 79 year old resident of San Nicholas, Aruba, had an investment account that was earning interest at a rate of 8% per annum. Claimant also alleged that a representative of Respondent Prudential Securities, Inc. contacted Claimant and promised the Claimant that he would receive annual interest at a rate of at least 12% per annum on his investment if he would transfer his account to Prudential. Claimant further alleged that Claimant accepted Prudential Securities, Inc.'s offer with the understanding that Prudential Securities, Inc. would assist him in investing in low-risk, income producing securities. It was also alleged by Claimant that Claimant's initial investment was \$1,175,836.53, (consisting of two deposits).

Further, Claimant alleged that by December 1986, however, the value of the Claimant's account had decreased by more than \$100,000.00 from its original value; that Claimant complained about the poor performance of his account; and that a representative for Prudential Securities, Inc. promised Claimant a guaranteed rate of return on his investment of 23 to 25% if the account was kept with Prudential Securities, Inc. Claimant also alleged that on December 26, 1986, Claimant wrote a representative of Respondent seeking written confirmation of the promise made; that absent such confirmation Claimant requested that Respondent transfer the full original value of his account to a specified brokerage firm; and that the representative refused to confirm his promise in writing.

Claimant further alleged that on February 16, 1987, Claimant requested that Prudential Securities, Inc. return the full original value of his account to him; that the value of Claimant's account at the time was \$1,165,000.00; and that Respondent did not return Claimant's account as requested and continued without Claimant's authority, to invest in a variety of securities and risky put and call options. Claimant also alleged that as a result of the unauthorized trading that took place in the account, the value of Claimant's account dropped considerably after October 19, 1987.

Claimant further alleged that on or about May 19, 1993, Respondent sent Claimant a letter providing a detailed description of the transactions in Claimant's account; that the letter incorrectly stated that Claimant "authorized all purchases and sales in your account"; and that by Respondent's own admission in this letter, only the transactions and trades detailed in the letter for 1985 and 1986 were authorized by Claimant and that the letter reveals a significant amount of trading in part of 1986, 1987 and 1988 that was not based on Claimant's authorization.

Claimant also alleged that over a period of several years, Claimant sought without success to

obtain a refund from Respondent of the full original value of Claimant's account; and, finally, on or about January 26, 1993, with the assistance of counsel, Claimant received the outstanding balance in Claimant's account of \$877,192.00; and that Respondent refused to remit to Claimant the value of his account as of February 16, 1987, plus interest.

Claimant further alleged that Respondent engaged in numerous unauthorized transactions and trades with funds in Claimant's account and that these transactions and trades were excessive and resulted in a precipitous decline in the value of Claimant's account at Prudential Securities, Inc., causing Claimant to lose a considerable amount of money; and that Respondent exercised discretion in Claimant's account without written authorization from the Claimant. Claimant also alleged that the representations made by the Respondent were intentionally made to deceive Claimant, and known by Respondent to be false; and that the false representations and excessive trading that occurred constituted a breach of Respondent's fiduciary duty to Claimant.

Respondent maintained that Claimant funded his account with deposits totaling \$1,175,836.52 in June of 1985. Respondent further maintained that for one and one half years following his initial investment Claimant authorized twenty-one trades and/or transactions, totaling approximately \$3,347,993.96 and requested numerous cash withdrawals totaling approximately \$271,690.00. Respondent contended that Claimant never expressed any dissatisfaction with the performance of the account, but on December 29, 1986, he wrote a letter to Respondent requesting a guaranteed investment yield of 23% annually and \$24,000.00 in restitution from Respondent "in consideration of the loss suffered during the past year", and Claimant concluded his letter by stating that "failing an agreement to the above", the account "would be terminated as of January 10, 1987, and the full deposit should be transferred to Merrill Lynch, Pierce, Fenner and Smith, Inc." ("Merrill Lynch"). Respondent further contended that it informed Claimant that a 23% return was unrealistic and that it would never guarantee such a return. Respondent maintained that in Claimant's December 29, 1986 letter, he referred to his securities account as a "deposit" and it is difficult to believe that he would not know the difference.

Respondent further maintained that it explained to Claimant that the rate of return on securities investments is determined by market conditions over which Respondent has no control and that Respondent could not simply liquidate his account and remit the proceeds to the general attention of Merrill Lynch, but rather Claimant would have to initiate the transfer by having the receiving broker at Merrill Lynch present Respondent with a broker-to-broker form which authorized Respondent to transfer the funds to a specific account. Respondent contended that it responded to Claimant's concerns about his rate of return by suggesting an investment strategy of writing options against covered positions to increase his yield, and Claimant consented to this over the telephone but subsequently refused to sign the necessary consent forms.

Respondent further contended that Claimant wrote a letter dated February 16, 1987 purporting to "confirm a guaranteed rate of return from Respondent of 25% with dividends payable every 3 months". Respondent maintained that it again informed Claimant that it could not guarantee

any rate of return or the security of his principal, and notwithstanding this, Claimant continued to authorize trades in his non-discretionary account and requested and received cash withdrawals from his account on April 16, 1987 and April 20, 1987. Respondent further maintained that Claimant wrote letters to Respondent dated April 27, 1987 and July 15, 1987, respectively, in which he requested a detailed statement of the account, and, although monthly statements and confirmations of all transactions in the account had been routinely sent to Claimant from the outset, a copy of his balance and position runs was sent.

Respondent contended that Claimant wrote a letter dated February 17, 1988 and enclosed copies of certain investment promotional materials from Merrill Lynch which he contended, offered rates of return similar to that which he was seeking from Respondent and Respondent replied that it never guaranteed him such a return and that Claimant was mistaken in his interpretation of the brochures. Respondent further contended that it advised Claimant that any future purchases or sales in the account would have to go directly through Albert Melzl, Respondent's Vice-President of International and Special Accounts.

Respondent maintained that on March 31, 1988, Mr. Van Nouhuys of the Royal Netherlands Embassy called to intercede on Claimant's behalf and Respondent explained that it could never guarantee a 23% to 25% return to Claimant and further explained the proper procedures for Claimant to transfer his account, and Mr. Van Nouhuys, in turn, informed Claimant of this. Respondent further maintained that despite clear instructions on how to transfer his account, both from his own representative and from Respondent, Claimant failed to take any steps to transfer or liquidate his account until four and one-half years later and continually attempted to portray his account as a "deposit" and demanded his "full original" investment back.

Respondent contended that over four years later, in September 1992 it was contacted by Claimant's counsel with a written request to liquidate Claimant's account at its then value of \$877,192.00, and Respondent immediately complied with this request. Respondent further contended that any losses realized by Claimant in trading the account, flowed from the poor performance of certain investments authorized by Claimant and from adverse market conditions, and therefore, it should not be held liable for Claimant's loss.

RELIEF REQUESTED

Claimant requested damages on each claim of relief in the sum of \$441,806.23 plus such other and further relief, including Claimant's costs and attorneys' fees as the arbitration panel deems just and proper.

Respondent requested a dismissal of all claims against it.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$235,000.00 inclusive of interest.
2. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$950.00 representing reimbursement of the claim filing fee and hearing session deposit previously paid to the NASD.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

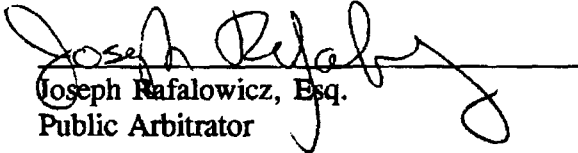
Non-refundable filing fee:	\$ 200.00
Hearing Session fees:	\$11,250.00 (15 hearing sessions x \$750.00 per session)
Total fees:	\$11,450.00

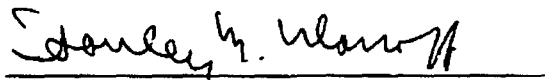
The undersigned arbitrators have determined that the Respondent Prudential Securities, Inc. is responsible for the cost of the arbitration.

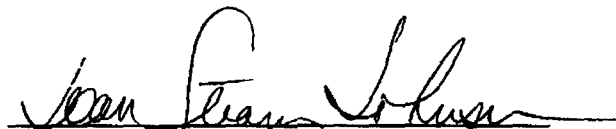
1. The Respondent Prudential Securities, Inc. is assessed the sum of \$11,450.00. Claimant previously paid \$950.00. Therefore, Respondent owes a balance of \$10,500.00.

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

ARBITRATOR'S SIGNATURE


Joseph Rafalowicz, Esq.
Public Arbitrator


Stanley M. Ulanoff
Public Arbitrator


Joan Stearns-Johnsen, Esq.
Industry Arbitrator

Date of Decision: April 25, 1995

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Award #93-02512

STATE OF: NEW YORK

SS:

COUNTY OF: WESTCHESTER

On this 27th day of March, 1995, before me personally appeared Joseph Rafalowicz, Esq. 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.

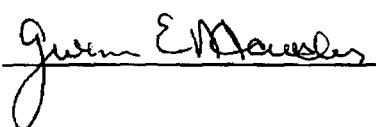

NANCY A. LUONGO
Notary Public, State of New York
No. 02LU5039014
Qualified in Westchester County
Commission Expires February 13 1997

STATE OF: New York

SS:

COUNTY OF: Nassau

On this 11th day of April, 1995, before me personally appeared Stanley M. Ulanoff 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.


GWENN E. HAESLER
Notary Public, State of New York
No. 30-4746133
Qualified in Nassau County
Commission Expires May 31, 1995

STATE OF: Texas

SS:

COUNTY OF: Dallas

On this 10th day of April, 1995, before me personally appeared Joan Stearns-Johnsen, Esq. 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 Rafalowicz, Esq.
Public Arbitrator

Stanley M. Ulanoff
Public Arbitrator



Joan Stearns-Johnsen, Esq.
Industry Arbitrator

Date of Decision: april 25, 1995

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Joseph Rafalowicz, Esq. 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Stanley M. Ulanoff 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.

STATE OF: *TEXAS*

SS:

COUNTY OF: *DALLAS*

On this *25th* day of *April* , 1995, before me personally appeared Joan Stearns-Johnsen, Esq. 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.

Sonja Browder

