

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roger and Janet Duncan

93-02757

Name of Respondents

Prudential Securities, Inc.
Jeff Cornell

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 15, 1993, Claimants Roger and Janet Duncan, through their counsel, Virginia C. Antipolo, Esq., of the firm Anderson, Hunter in Everett, WA, alleged that Respondent Jeff Cornell, through the Respondent firm, Prudential Securities, Inc. failed to timely invest IRA monies he wished to place into a new Prudential IRA, and that the Respondent not only failed to timely invest these IRA monies transferred within the required 60 day rollover period as promised, but also negligently failed to invest monies received in an IRA (and instead invested monies received in a general stock brokerage account). The Claimant further alleged that as result, Respondent Jeff Cornell caused the Claimant to be subject to immediate taxation on the IRA monies that were transferred and has caused him to bear attendant tax penalties for a premature distribution and failure to report income on the transferred amount. The Claimants contended that the Respondents negligently provided inappropriate account documents to the Claimants, that he did not understand and follow proper procedures with regard to the Claimants' request that an IRA transfer occur, and contended further that he misrepresented the urgency of the transaction. Claimants Roger and Janet Duncan maintained that they relied on the Respondents' promises and representations, and that they should be compensated for damages incurred due to the wrongdoing of the Respondent.

In an Amendment to the Claim, the Claimant clarified the issues at hand and contended that the Respondent should be held liable for the damages they have incurred.

Respondent Jeff Cornell, through his counsel, Stephen Levy, Esq. of Stephen Levy & Associates, Chicago, IL, in his reply to the Claim and Amendment, maintained that he offered no advice to the Claimant as to his tax strategy nor did the Claimant consult him in such regard,

and that he did not offer advice as to tax avoidance procedures. The Respondent also maintained that he denies all allegations of misrepresentation, inappropriate investment advice and action, failure to disclose and negligence, and further that the conclusion in the claim is not founded upon facts that may be the basis of an award, and therefore, the claim against him should be dismissed. Respondent Jeff Cornell contended that the Claimant did not advise him or his firm that he had closed his Merrill Lynch IRA, nor the date of the intended closing and withdrawal of the funds from the account.

Respondent Prudential Securities, Inc., through its in-house counsel, Peter Byer, Esq., maintained that Respondent Jeff Cornell made every effort to comply with the Claimants' request by forwarding the IRA application to their accountant, but the application was not received by the firm. The Respondent also maintained that the Claimants received monthly statements that reflected no IRA account existed and did not notify anyone that the IRA was not opened prior to the expiration of the 60 day period, and that therefore, it should be dismissed from this matter.

RELIEF REQUESTED

Claimants Roger and Janet Duncan requested \$9,961.00 in actual damages, plus costs and attorney's fees.

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

Respondent Jeff Cornell 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, John F. Cockburn, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 9, 1993, by Respondent Jeff Cornell on September 3, 1993, but not signed by Respondent Prudential Securities, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

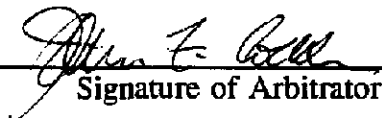
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. and Jeff Cornell are jointly and severally liable and shall pay to Claimants Roger and Janet Duncan \$8,719.00 in actual damages.

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 Jeff Cornell are jointly and severally liable and shall pay \$150.00 to the Claimants as reimbursement.

AFFIRMATION

I, **JOHN F. COCKBURN**, 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: January 3, 1994