

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Simon & Ethel L. Silver

93-02765

Name of Respondent

Prudential Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 15, 1992, Claimants Simon and Ethel L. Silver, who appeared Pro Se, alleged that on or about February 5, 1993 they received a "Client Confirmation" informing them that they had purchased \$3,841.00 of Prudential Money Mart Assets Fund, and thereafter Claimants discovered that in order to do so sold from their account on the same day \$3,841.00 of Thompson Cat Fund. Claimants further alleged that Respondent Prudential Securities, Inc. debited their account for \$3,841.00 for the purchase and credited their account for the sale, at which time, Claimants received a check for such amount in February 1993. Claimants contended that in February 1993 they also received a similar "Client Confirmation" informing them that they sold 1,666 Money Mart Assets Fund that these shares were part of a Prudential Cat Fund Conversion and eligible for automatic redemption. Claimants further contended that their February 1 to February 28, securities account statement confirmed that on February 12, they sold the Prudential Money Mart Assets Fund Auto Redemption and they credited them with the said sum of \$1,666.00 which sum was never paid to them although they have demanded such payment. Claimants asserted that in the month of February they were credited with the sum of \$2,170.00, of interest on four separate bonds and this money was paid to Claimants. Claimants further asserted that in the February statement, they were credited \$725.00, the interest of two additional bonds and this money they also received. Claimants further alleged that the only money that was credited to them which they did not receive is the sum of \$1,666.00 which is still outstanding although duly demanded.

Respondent Prudential Securities, Inc., by and through their in-house counsel Mark L. Seffinger, Esq., maintained that contrary to Claimants', Simon and Ethel L. Silver, allegations, it is

Respondent's position that Claimant's account net worth was correctly calculated on their account statement, and the sum of \$1,666.00 is not owed to them. Respondent further maintained that on February 11, 1993, Respondent issued a check to Claimants for \$3,841.36 upon Claimant Simon Silver's request and this sum represented the opening money market fund balance, and opening cash balance in Claimants' account. Respondent contended that additional cash had accumulated in Claimants' account from February 1st until the date the check was sent to Claimants which amounted to \$2,175.12 whereby this cash accumulation was not included in the check issued to Claimants on February 11th, nor was this amount added to Claimants' existing money fund holdings up to that point. Respondent further contended that rather than liquidate Claimants' entire opening Moneymart Fund Position of \$3,841.16 to cover the check paid for that amount, Respondent first applied the excess cash in the amount of \$2,175.12 against the \$3,841.36 check, whereby only the difference of \$1,666.00 was required to be liquidated from Claimants' Moneymart Fund, thereby allowing Claimants to continue to earn interest on the amount in their Moneymart Fund, at which time, on February 12th, \$1,666.00 was liquidated from Claimants' Moneymart Fund, and on February 16th, an additional \$1.00 was liquidated which brought Claimants' Closing Cash Balance to \$.76 Respondent asserted that as a result of Claimants' Moneymart Fund liquidation of \$1,666.00, the clients' Closing Moneymart Balance, including reinvested dividends, was \$2,177.00. Respondent further asserted that in conclusion, the account statement analysis clearly illustrated that Claimants are not owed the sum of \$1,666.00, as they incorrectly allege.

RELIEF REQUESTED

Claimants Simon and Ethel L. Silver requested the sum of \$1,666.00 in actual damages.

Respondent Prudential Securities, Inc. requested the claim be denied and they be awarded costs incurred for defending this frivolous claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Samuel H. Freeman, 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 September 14, 1993 and by the Respondent on August 9, 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. The claim of Claimants Simon and Ethel L. Silver against Respondent Prudential Securities, Inc. is dismissed.

2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Simon and Ethel L. Silver shall be retained by the NASD, Inc.

AFFIRMATION

I, **SAMUEL H. FREEMAN, 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.

Samuel H. Freeman
Signature of Arbitrator

DATE OF DECISION: December 1, 1993

STATE OF: New York

SS:

COUNTY OF: New York

On this 19th day of November, 1993, before me personally appeared Samuel H. Freeman, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Mark O. Glut

MARK O. GLUT
Notary Public, State of New York
No. 4995193
Qualified in Queens County
Commission Expires April 20, 1994