

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Stephen F. Bowman and  
Melinda S. Bowman,

NASD Arbitration  
No. 93-02984

Name of Respondents

Prudential Securities, Inc. and  
Glenn C. Hewitt

---

REPRESENTATION

For Claimants: David Liebrader, Esq., Investors Arbitration Services, Woodland Hills,  
California.

For Respondents: Joel Levinson, Esq., Prudential Securities, New York, New York.

CASE INFORMATION

Statement of Claim filed: June 6, 1993

Claimants' Submission Agreement signed: June 6, 1993

Joint Statement of Answer filed by Respondents: October 26, 1993

Respondent Prudential's Submission Agreement Signed: October 26, 1993

Respondent Hewitt's Submission Agreement signed: October 12, 1993

HEARING INFORMATION

Hearing Dates / Sessions:	July 26, 1994	-	2 sessions
	July 27, 1994	-	2 sessions
	July 28, 1994	-	2 sessions
	Aug. 15, 1994	-	2 sessions
	Aug. 16, 1994	-	2 sessions
	Aug. 17, 1994	-	2 sessions

Hearing Location: Los Angeles, California

## CASE SUMMARY

Claimants alleged the following causes of action: (1) fraud, deceit and omission of material fact, (2) unsuitability, (3) breach of NASD Rules of Fair Practice, (4) breach of NASD "Know Your Customer Rule", and (5) breach of duty by a broker to know the nature and risks of the securities which they recommend.

Claimant also charged failure to supervise, conflict of interest, and churning of Claimants' account for the sole purpose of generating commissions, in breach of NASD Rules of Fair Practice.

Respondents denied Claimants' allegations and allege that Claimant Stephen Bowman was an experienced investor who had the background and assets to understand and withstand the risks involved in the purchase of speculative securities.

Respondents further alleged that the risks involved in the purchase of a foreign security (Kelpie) was fully disclosed to Claimants, and that Claimants ratified all transactions. Respondents also asserted affirmative defenses, including ratification, estoppel, waiver and the statute of limitations. They also claim that the account was properly supervised and there was no overtrading.

## RELIEF REQUESTED

Claimants requested damages in the amount of approximately \$490,000.00; loss of future profits in an unnamed amount; pre-judgment and post-judgment interest; punitive damages in the amount of at least \$500,000.00; costs of arbitration including attorney's fees and consulting fees.

Respondents requested that Claimants' claim be dismissed in its entirety.

## OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

## 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. Claimants are awarded the sum of \$235,000.00, plus interest at the rate of 10% from the date that the claim was filed (June 6, 1993) until paid.

2. Respondent Hewitt is found to have engaged in acts of harassment and intimidation in an effort to dissuade claimants from prosecuting their claims and is assessed punitive damages in the sum of \$10,000.00, pursuant to Todd Shipyard Corp. vs. Cunard Line Ltd. 943 F2d 1056 (9th Cir., 1991).

3. The parties shall bear their respective costs, including attorney's fees and consultation fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall refund the \$750.00 hearing session deposit previously deposited by Claimants. In addition, the following forum fees are assessed:

Prudential Securities and Glenn C. Hewitt, jointly and severally:  
12 Hearing sessions @ \$750.00 / session = 9,000

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

### **ARBITRATORS**

<u>Name</u> .....	<u>Public / Industry</u>
Bernard Seglin, Esq.	Public Chairperson
Merton Bobo	Public Panelist
Larry Maize	Industry Panelist

### **Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Bernard Seglin, Esq.

\_\_\_\_\_  
Merton Bobo

\_\_\_\_\_  
Larry Maize

2. Respondent Hewitt is found to have engaged in acts of harassment and intimidation in an effort to dissuade claimants from prosecuting their claims and is assessed punitive damages in the sum of \$10,000.00, pursuant to Todd Shipyard Corp. vs. Cunard Line Ltd. 943 F2d 1056 (9th Cir., 1991).

3. The parties shall bear their respective costs, including attorney's fees and consultation fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall refund the \$750.00 hearing session deposit previously deposited by Claimants. In addition, the following forum fees are assessed:

Prudential Securities and Glenn C. Hewitt, jointly and severally:  
12 Hearing sessions @ \$750.00 / session - 9,000

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

#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Bernard Seglin, Esq.	Public Chairperson
Merton Bobo	Public Panelist
Larry Maize	Industry Panelist

#### Concurring Arbitrators' Signatures

Bernard Seglin  
Bernard Seglin, Esq.

\_\_\_\_\_  
Merton Bobo

\_\_\_\_\_  
Larry Maize

2. Respondent Hewitt is found to have engaged in acts of harassment and intimidation in an effort to dissuade claimants from prosecuting their claims and is assessed punitive damages in the sum of \$10,000.00, pursuant to Todd Shipyard Corp. vs. Cunard Line Ltd. 943 F2d 1056 (9th Cir., 1991).

3. The parties shall bear their respective costs, including attorney's fees and consultation fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall refund the \$750.00 hearing session deposit previously deposited by Claimants. In addition, the following forum fees are assessed:

Prudential Securities and Glenn C. Hewitt, jointly and severally:  
12 Hearing sessions @ \$750.00 / session = 9,000

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


#### ARBITRATORS

<u>Name</u> .....	<u>Public / Industry</u>
Bernard Seglin, Esq.	Public Chairperson
Merton Bobo	Public Panelist
Larry Maize	Industry Panelist

#### Concurring Arbitrators' Signatures

\_\_\_\_\_  
Bernard Seglin, Esq.

\_\_\_\_\_  
Merton Bobo

  
\_\_\_\_\_  
Larry Maize