

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Serafin Garcia & Manuel Garcia Armas

Case No. 93-03219

**Name of Respondents**

Prudential-Bache Securities Inc.  
Fernando Leyva

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**REPRESENTATION**

For Claimants Serafin Garcia & Manuel Garcia Armas ("Garcia"): James F. Gilbride, Esq., of Gilbride, Heller & Brown, P.A., Miami, Florida.

For Respondents Prudential-Bache Securities Inc. ("Prudential") & Fernando Leyva ("Leyva"): Delmer C. Gowing III, Esq., of Delmer C. Gowing, III, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed: July 22, 1993.

Claimant's Serafin Garcia Submission Agreement signed on: August 18, 1993.

Statement of Answer filed by Respondents, Prudential and Leyva on: December 23, 1993.

**HEARING INFORMATION**

On January 17 and January 18, 1995, in Fort Lauderdale, Florida, hearings lasting 4 sessions were conducted.

**CASE SUMMARY**

Claimants, alleged that Garcia's account was churned by Prudential's broker Leyva. Garcia further alleged that the account was excessively traded and that Leyva had control of it and that the other requisite elements of excessive trading and scienter existed. The Claimant determined this based upon his allegation that during the four year period of trading there were \$430,000.00 in commissions, \$67,500,000.00 million in buys and sells and, a total of 443 commission transactions. The Claimant also relied upon his allegation that the turnover ratios in the account varied from 6 to as high as 15 in the four year trading period.

Respondents alleged that the Claimant alleged losses of \$330,000.00 as a result of churning and negligent supervision by the Branch Manager of Prudential. The Respondents further alleged that the Claimant alleged a lack of understanding and little or no contact between the broker and the Claimant. Respondents indicated that the broker contacted the Claimant several times a day and that the documents in evidence clearly showed such contact. Respondents further asserted that the Claimant's accounts were properly supervised.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$1,431,135.38 based upon the expected earnings of a well managed portfolio.

Respondent requested dismissal of all claims, and assessment of all fees against the Claimant, and the award of attorney's fees.

**OTHER ISSUES CONSIDERED & 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 originals remain 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. The Respondents Prudential and Leyva are found not liable and therefore, all claims against them are hereby dismissed.
2. Respondents requests for attorney's fees and costs are denied.

**OTHER COSTS**

Other than provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,000.00 (4 hearing sessions x \$1,000.00).

Claimants are hereby assessed \$2,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,000.00 payable to the National Association of Securities Dealers, Inc.

Respondents, Prudential and Leyva are hereby assessed \$2,000.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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Concurring Arbitrators' Signatures

Name	Public/Industry
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<u>/s/</u> Leo H. Kerns, Esq.	Public
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<u>/s/</u> David P. Wardwell	Industry
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<u>/s/</u> Martin Weinberg	Public
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Date of Decision: February 21, 1995