

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jeff R. Moore, M.D.

93-03386

Name of Respondents

Prudential Securities, Inc.  
Gordon McOwen

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on August 27, 1993, Claimant Jeff R. Moore, M.D., who appeared Pro Se, alleged that on August 9, 1985, he purchased a Western Savings and Loan 10% CD ("10% CD") due October 31, 1992 from Shearson Lehman Brothers, Inc. Claimant further alleged that when Respondent Gordon McOwen ("McOwen"), his broker at Shearson Lehman Brothers, Inc. ("Shearson"), left Shearson to work at Thomson McKinnon Securities, Inc. ("Thomas McKinnon"), he transferred his account to Thomas McKinnon. Claimant contended that Thomson McKinnon carried the 10% CD in his account through October, 1987. Claimant further contended that in November, 1987, his account statement indicated that his 10% CD was a zero coupon certificate. Claimant alleged that at a later date Thomson McKinnon was taken over by Respondent Prudential Securities, Inc. ("Prudential") and this zero coupon certificate was transferred to Respondent Prudential. Claimant further alleged that when he inquired as to what happened to his 10% CD no one was able to give him an answer. Claimant contended that on June 11, 1992, Respondent Prudential delivered the zero coupon certificate and he received only the face value of the certificate, with no interest accruing since 1987. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondent Gordon McOwen, who appeared Pro Se, maintained that in September, 1989, Respondent Prudential took over the accounts of Thomas McKinnon. Respondent further maintained that after Respondent Prudential took over these accounts, he noticed that between October and November, 1987, Claimant's 10% CD changed to a zero coupon. Respondent maintained that as far as he could tell, from the time Claimant purchased the 10% CD to the time the error was found Claimant never received any interest on the 10% CD. Respondent contended that a client has to be responsible and aware if interest from an investment has been credited to his account. Respondent further contended that it is not in his control when interest payments do not get credited to accounts. As a result of the above, Respondent maintained that he should not be held liable in this matter.

Respondent Prudential Securities, Inc., through its in-house counsel Renee Kwait Rettig, New York, New York, maintained that the 10% CD in question was not purchased from Respondent. Respondent further maintained that the change from a 10% interest bearing CD to a zero coupon certificate did not occur while the position was held at Respondent. Respondent contended that on or about July 17, 1989, Respondent entered into an asset purchase agreement with Thomson McKinnon which only transferred to Respondent those assets and liabilities of Thomson McKinnon specifically listed in the agreement. Respondent further contended that it did not agree in this agreement to assume liability for lawsuits asserted against Thomson McKinnon or its brokers on the basis of securities fraud, negligence, or breach of fiduciary duty. As a result of the above, Respondent contended that it should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Jeff R. Moore, M.D. requested at least \$1,400.00 in actual damages.

Respondent Gordon McOwen requested that the Claimant's claims against him be dismissed in their entirety.

Respondent Prudential Securities, Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs be assessed against Claimant.

**AWARD**

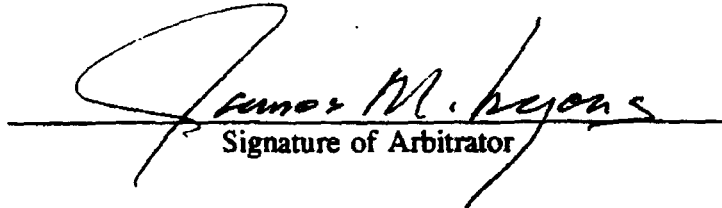
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, James M. Lyons, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 19, 1993, by Respondent Gordon McOwen on January 19, 1994, and by Respondent Prudential Securities, Inc. on November 8, 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 claims of Claimant Jeff R. Moore, M.D. against Respondents Gordon McOwen and Prudential Securities, Inc. are dismissed in their entirety.
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 Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, JAMES M. LYONS, do hereby affirm upon my oath of 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: August 8, 1994