

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert Bergamini

93-04700

Name of Respondent

Prudential Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 11, 1993, Claimant Robert Bergamini, through his counsel, Michel J. Landron, Esq., Brooklyn, NY, alleged that Respondent Prudential Securities, Inc. caused him to lose interest on a \$50,000 face value bond, New York State Housing Finance Agency Hospital & Nursing Home Project when it represented to him in and by the account statements it produced that the bond was accruing interest, which was false. The Claimant further contended that the Respondent breached its fiduciary duty by sending him false and misleading statements, by failing to warn Claimant of any irregularities in his account and by failing to exercise even the most fundamental accounting and bookkeeping controls over the transfer of the account. Claimant Robert Bergamini contended that due to the wrongdoing of the Respondent, he has suffered damages for which the Respondent should be held liable.

Respondent Prudential Securities, Inc., through in-house counsel, David L. Glotzer, Esq., New York, NY, maintained that the Claimant had intended to buy both the Bonds and the Put options, however, it is apparent that only the Put options were owned by the Claimant, as indicated by the cusip number of the investment. The Respondent further maintained that it was never in possession of the bond, and that Thompson McKinnon (where the purchase took place) had made a mistake. The Respondent contended that since it never possessed the bonds it was not obligated to pay interest on them, but that the Claimant has maintained this action against it merely because it is the only "deep pocket" left to seek monies from, but it is clearly not at fault.

In a Counterclaim, Prudential Securities, Inc. alleged that Robert Bergamini owes to it an amount representing erroneous interest payments made to him in 1989 and that he should be held liable for this amount.

In a reply to the Answer and Counterclaim, Robert Bergamini contended that the Counterclaim of Prudential Securities, Inc. is without merit and seeks to reward Respondent for its own material breaches of its duties and for its indifference toward ethical and professional standards. The Claimant further contended that the Respondent has given no factual or legal basis for its counterclaim, and therefore should be dismissed. Claimant Robert Bergamini further refuted the defenses of the Respondent and asked he be compensated for the damages suffered due to the wrongdoing of Respondent Prudential Securities, Inc.

In a reply to the Claimant's reply to Answer and Counterclaim, Respondent Prudential Securities, Inc. reiterated its defenses and maintained that the claims is baseless, and again requested that the Claimant be held liable to repay interest paid to him in error.

RELIEF REQUESTED

Claimant Robert Bergamini requested a total of \$9,033.45 in actual damages, plus costs, expenses, forum fees and disbursements of this arbitration, along with \$1,500.00 in attorney's fees, and further that the counterclaim against him be dismissed.

Respondent Prudential Securities, Inc. requested that the claims of the Claimant be dismissed, and that it be awarded \$2,800.00 in actual damages, plus \$1,071.00 in interest.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitrator reviewed and considered the Motion to Strike filed by the Claimant Robert Bergamini. The motion is denied. All pleadings have been considered in this matter.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martin J. Siegel, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 22, 1993 and by the Respondent on March 4, 1994.

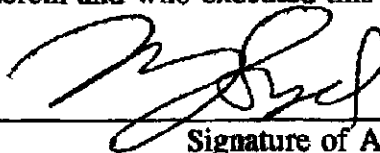
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Robert Bergamini against Respondent Prudential Securities, Inc. are dismissed in their entirety.

2. The Counterclaim of Respondent Prudential Securities, Inc. against Claimant Robert Bergamini is also dismissed in its entirety.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Prudential Securities, Inc. is liable and shall pay \$150.00 to the Claimant as reimbursement of the filing fee.

AFFIRMATION

I, MARTIN J. SIEGEL, 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.



Signature of Arbitrator

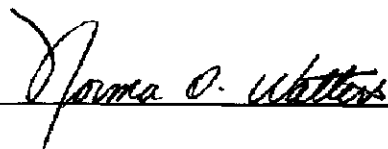
DATE OF DECISION: July 28, 1994

STATE OF: NY

ss:

COUNTY OF: NY

On this 25 day of July 1994, before me personally appeared Martin J. Siegel, 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.



NORMA O. WALTERS
Notary Public, State of New York
No. 30-4904194
Qualified in Nassau County
Commission Expires Aug. 31, 1995