

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**Name of Claimant**

Jo Minor

93-05044

**Name of Respondents**

Prudential Securities, Inc. and Patrice  
A. Mackie

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**REPRESENTATION OF PARTIES**

Claimant Jo Minor ("Minor") was represented at the hearing by Henry Field, Esq. of the Law Offices of Henry Field, Ltd., Chicago, Illinois.

Respondent Prudential Securities, Inc. ("Prudential") was represented at the hearing by Christopher M. Mone, Esq. of Prudential Securities, Inc., New York, New York.

Respondent Patrice Mackie ("Mackie") was represented at the hearing by co-counsel to Christopher Mone, William Holland, Esq. of Holland and Holland, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on December 6, 1993. Response to Respondent's Motion to Dismiss the claim filed on or about March 24, 1994. Claimants' Submission Agreement signed on November 26, 1993.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Prudential and Mackie on February 2, 1994.

Respondent, Prudential's Submission Agreement signed on July 20, 1994. Respondent, Mackie's Submission Agreement signed on July 13, 1994.

**HEARING INFORMATION**

Prehearing conferences were held on October 5, 1994 for one (1) session, December 2, 1994 for one (1) session, and on January 9, 1995 for one (1) session.

The hearings were held on December 14, 1994 for two (2) sessions, December 15, 1994 for two (2) sessions, and on January 17, 1995 for two (2) sessions in Chicago, Illinois.

CASE SUMMARY

Claimant Minor alleged the following Counts as her Statement of Claim: Count I, Breach of Fiduciary Relations, Count II, Breach of Contract, Count III, Fraud, Count IV, Constructive Fraud, Count V, Lack of Due Care in Performing Contract, Count VI, Illinois Securities Act, Count VII, Securities Act of 1934, Count VIII, RICO, 1962(a), Count IX, RICO, 1962(c).

Claimant further alleged in her Statement of Claim that Respondents Prudential and Mackie recommended high-risk investments such as Centocor, Inc., LSI Logic Corporation, and Glaxo Holdings, while representing that they were safe, forged Minor's signature on the Client Agreement, and engaged in at least one unauthorized trade. Claimant Minor also alleged that Prudential failed to supervise Mackie.

Respondents Prudential and Mackie (collectively "Respondents") in their joint Statement of Answer and Motion To Dismiss stated that Minor must be barred from pursuing her claim with respect to her purchase of Centocor, Inc. since she chose to participate in the Centocor class action. Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Minor was a sophisticated investor and was advised of any risks involved. Respondents also stated that Minor chose to purchase Centocor after Mackie recommended a selection of stocks, including Centocor. Respondents stated that Minor's name was not forged on the Client Agreement and that the burden of proof is Minor's responsibility.

Claimant Minor, in her Reply to the Motion to Dismiss stated that there are no duplicative claims. In Respondents Response to the Reply, Respondents stated that Minor's claim is not eligible for arbitration since she is a member of the Centocor class action.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of her loss (\$17,797.86), plus interest from January 1, 1992 to the date of the award, treble damages amounting to \$53,393.58, plus interest pursuant to 18 U.S.C., Section 1964(c), attorneys fees, filing fees and costs, and such other and further relief as claimant may request or the panel may order.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The NASD administratively denied Respondent's Motion to Dismiss based on Section 12(d)(2) of the NASD Code of Arbitration Procedure

and stated that the parties may re-raise the issue with the panel. The motion was re-raised with the panel but subsequently denied.

Count VIII and Count IX of the Statement of Claim were withdrawn prior to hearing by Claimant.

The parties have agreed that the Award in this matter may be executed by 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. Count I: The panel finds no breach of fiduciary relation;  
Count II: The panel finds no breach of contract;  
Count III: The panel finds no proof of constructive fraud;  
Count IV: The panel finds no proof of professional negligence;  
Count V: The panel finds no proof of professional negligence;  
Count VI: The panel finds no violation of the Illinois Securities Act;  
Count VII: The panel finds no violation of the Federal Securities Act;  
Count VIII and Count IX were withdrawn prior to hearing;
2. Claimant's request for interest is denied;
3. Claimant's request for treble damages is denied;
4. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for under Forum Fees below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

6 hearing sessions x \$1000= \$6000 plus three (3) prehearing conference sessions x \$300 = \$900 equals net \$6900 due to the NASD.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$250 previously deposited by Claimant.

The panel has ordered that Claimant, Jo Minor, pay the additional forum fees in the sum of \$6900 to the NASD.

Additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

2/28/95

s/s Richard L. Merrick  
Richard L. Merrick, Esq.  
Presiding, Public Arbitrator

3/1/95

s/s Michael F. Jordan  
Michael F. Jordan, Esq.  
Public Arbitrator

2/27/95

s/s Marc Horin  
Marc B. Horin  
Industry Arbitrator

Date Award Served by the NASD: (for NASD use only) 3/9/95.