

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Raymond J. Spellman

93-05378

Name of Respondents

Prudential Securities, Inc. f/k/a Prudential Bache Securities, Inc.  
Joseph Zampetti

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**REPRESENTATION**

For Claimant Raymond J. Spellman ("Spellman") appeared Mitchel H. Cobert, Esq., a sole practitioner, located in Morristown, New Jersey.

For Respondent Prudential Securities, Inc. ("Prudential") appeared in-house counsel, Arthur Baumgarten, Esq.

Respondent Joseph Zampetti ("Zampetti") appeared Pro Se.

**CASE INFORMATION**

Statement of Claim filed: December 29, 1993.

Claimant's Submission Agreement signed on: December 22, 1993.

Statement of Answer filed by Respondent Prudential on: March 18, 1994.

Respondent Prudential's Submission Agreement signed on: March 18, 1994.

Statement of Answer filed by Respondent Zampetti on: May 9, 1994.

Respondent Zampetti did not file a duly executed Submission Agreement.

### HEARING INFORMATION

Pre-Hearing Conference:	January 18, 1995	one session
Hearing Dates/Sessions:	April 27, 1995	one session
	May 24, 1995	two sessions
	May 25, 1995	two sessions
	October 23, 1996	two sessions

The hearings were conducted at the offices of NASD Regulation located at 33 Whitehall Street in New York, New York.

### CASE SUMMARY

Claimant alleged that in November of 1992, he spoke with Zampetti, a registered representative of Prudential, in order to obtain financial advice on how to invest his total savings of \$30,000.00. Claimant further alleged that he informed Zampetti that he would need the principal amount returned to him by April of 1993 in order to purchase a truck and a commercial sweeper for his landscaping business. Claimant also alleged that Zampetti offered improper investment advice over the subsequent four months and also made unauthorized trades. Claimant contended that the principal amount decreased which prevented him from purchasing the aforementioned equipment and also resulted in the loss of a 3-year \$11,000.00 landscaping contract.

Claimant further contended that Zampetti induced him to purchase shares of Amtech Corporation ("Amtech") as follows: 1,000 shares on December 28, 1992 and a total of 1200 shares on December 30, 1992. Claimant also contended that prior to the purchases, Zampetti informed him that he knew of certain information, not yet publicly known, which would increase Amtech's value from \$25.00 per share to over \$40.00 per share. Claimant asserted that in February 1993, he sold the Amtech shares as follows: 1,100 shares on February 8, 1993 and 1,100 shares on February 11, 1993. Claimant further asserted that he made a profit in the Amtech transactions so he followed Zampetti's recommendation to start trading puts and calls. Claimant alleged that between February and March 1993, he lost \$7,171.87 trading puts and calls on Amtech despite Zampetti's assurances that he would not lose money.

Claimant asserted that on March 5, 1993, at the direction of Zampetti, he purchased shares of Oneita Industries Inc., later sold on May 24, 1993, for a net loss of \$7,849.03. Claimant also asserted that in April of 1993, he learned through his account statement that Zampetti had purchased shares of St. John Knits, Inc. without authorization. Claimant further asserted that he complained to Zampetti but was told that the purchase was a 'gift'. Claimant asserted that Zampetti later sold the shares without authorization on April 1, 1993 for a \$345.13 loss. Claimant contended that on March 17, 1993, at the request of Zampetti, he purchased shares of UJB Financial Corporation because according to Zampetti, the stock was going to rise as the bank was about to be bought out. Claimant further contended that the UJB shares were sold for

a \$1,722.18 loss. Claimant also contended that on April 1, 1993, at the urging of Zampetti, he purchased shares of Sulcus Computer Corporation. Claimant alleged that Zampetti told him this stock was the 'big hitter' and would go from \$9.00 per share to \$14.00 per share within a few days but that it was ultimately sold for a net loss of \$7,517.62. Claimant alleged that on April 13, 1993, Zampetti, without authorization, purchased shares of Amtech which he sold the following day for a \$1,122.54 profit.

Claimant further alleged he was not informed of the risks associated with the transactions recommended by Zampetti. Claimant also alleged that Zampetti willfully did not inform him of the excessive commissions he was receiving. Claimant further alleged that Prudential is liable to him for having hired and engaged Zampetti for the purpose of effectuating securities transactions and is liable to him on the theory of respondeat superior.

Respondent Prudential maintained that claimant authorized each transaction in his account and all trading activity was consistent with his investment objectives, experience and financial resources. Respondent further maintained that claimant signed agreements with it which show he desired speculative investments. Respondent also maintained that claimant was informed of the risks associated with investing in the options market. Respondent contended that claimant repeatedly expressed his understanding of market risks associated with the types of investments he was making. Respondent further contended that commissions were charged on the trades and that such commissions were described in the New Account Agreement. Respondent also contended that confirmations and monthly account statements were sent to claimant thereby providing timely and appropriate notification of all trades conducted in the account. Respondent asserted that, with the exception of the options orders, claimant did not complain about the trades made through Prudential. Respondent further asserted that claimant requests reimbursement for losses he suffered on stocks he sold after he stopped trading through Prudential. Respondent also asserted that the claims are meritless on their face and should be dismissed in their entirety.

Respondent Zampetti denied each and every allegation made in the Statement of Claim. Respondent maintained that claimant signed agreements in which he certified that his investment objective was speculation. Respondent further maintained that claimant had informed him that he frequently traded new issues in other accounts and had made money doing so. Respondent also maintained that did not inform him that the money he was using for investment purposes was needed to purchase business equipment. Respondent contended that the risks associated with the type of trading which claimant was undertaking was discussed with, and fully understood by, claimant. Respondent further contended that all of the transactions were approved by, and discussed with, the claimant prior to the execution. Respondent also contended that, at minimum, claimant ratified all account activity since he did not complain of the trades until several months after the transactions were completed.

### **RELIEF REQUESTED**

Claimant requested \$17,000.00 in actual damages plus interest at 12%, penalties, compensatory damages, punitive damages, counsel fees, costs and such other and further relief as the panel deems fair and just.

Respondent Prudential requested that the claims be dismissed in their entirety plus relief as the panel deems appropriate.

Respondent Zampetti requested that the claims be dismissed plus costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the determination on the merits, and with approval of the panel, claimant Raymond J. Spellman withdrew his claims, with prejudice, against Respondent Joseph Zampetti on October 23, 1996.

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. Respondent Prudential Securities, Inc. be and is hereby liable and shall pay to Claimant Raymond Spellman \$6,980.93 in actual damages.
2. All other relief requests are denied in their entirety.
3. The parties shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

1 pre hearing session x \$300.00	= \$ 300.00
7 hearing sessions x \$400.00	= \$2,800.00
Minus claimant's \$400.00 deposit	= <u>\$ 400.00</u>
Total outstanding	= \$2,700.00

Respondent Prudential Securities be and hereby is liable for the sum of \$3,100.00 representing the total amount of forum fees assessed. Therefore, Prudential Securities, Inc. shall pay to NASD Regulation \$2,700.00 in satisfaction of the amount owed to NASD Regulation. NASD Regulation shall retain the \$400.00 deposit previously deposited by the claimant and respondent Prudential Securities, Inc. shall pay to claimant Raymond Spellman \$400.00 as reimbursement of the hearing session deposit.

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

**ARBITRATORS' SIGNATURES**

I, Michael E. Curan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Michael E. Curan, Esq.

I, Gerald Alpert, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Gerald Alpert, Esq.

I, Sidney D. Krasner, do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

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Sidney D. Krasner

Date of Decision: November 18, 1996

Respondent Prudential Securities be and hereby is liable for the sum of \$3,100.00 representing the total amount of forum fees assessed. Therefore, Prudential Securities, Inc. shall pay to NASD Regulation \$2,700.00 in satisfaction of the amount owed to NASD Regulation. NASD Regulation shall retain the \$400.00 deposit previously deposited by the claimant and respondent Prudential Securities, Inc. shall pay to claimant Raymond Spellman \$400.00 as reimbursement of the hearing session deposit.

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

**ARBITRATORS' SIGNATURES**

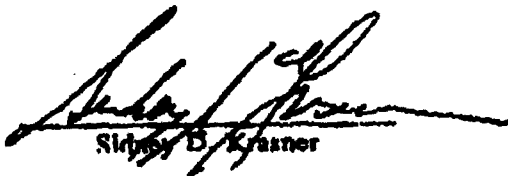
I, Michael E. Curan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Michael E. Curan, Esq.

I, Gerald Alpert, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Gerald Alpert, Esq.

I, Sidney D. Kraemer, do hereby swear or affirm that I am the individual described herein, and who executed this instrument which is my oath and award.

  
Sidney D. Kraemer

Date of Decision: November 18, 1996