

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Robert J. Petrlik

94-00309

Name of Respondent

Prudential Securities, Inc.

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**REPRESENTATION**

For Claimant Robert J. Petrlik ("Claimant"): Michael R. Murphy, Attorney at Law, Washington, D.C.

For Respondent Prudential Securities, Inc.. ("Respondent"): Gary Klein, Vice President and Associate General Counsel for Prudential Securities, Inc., New York, NY

**CASE INFORMATION**

Statement of Claim filed: January 26, 1994

Claimant's Submission Agreement signed on: December 15, 1993

Statement of Answer filed on: May 18, 1994

Respondent's Submission Agreement signed on: May 27, 1994

**HEARING INFORMATION**

Hearing Dates/Sessions:

April 12, 1995 - two sessions

April 13, 1995 - two sessions

Hearing Location: NASD Executive Office, Washington, D.C.

**CASE SUMMARY**

Claimant alleged, among other things, that Scott T. Balog ("Balog") who was a registered

representative with Respondent solicited Claimant to open an account at Respondent. Claimant alleged that he explained to Balog that he was a self employed plumber, and that his savings represented his retirement fund. Claimant alleged that at the time Balog solicited Claimant's business, Claimant held 1086 share of Maryland Federal Bankcorp and 512 shares of Franklin Maryland Tax-Free Income Fund. Claimant alleged that he told Balog that he did not desire to sell his Maryland Federal Bankcorp shares and in reliance on Balog's promise not to sell these shares, Claimant delivered his certificates to Balog. Claimant alleged, that notwithstanding Balog's representations to the contrary, Balog sold Claimant's Maryland Federal Bankcorp stock without Claimant's knowledge or authorization. Claimant alleged that Balog took control of Claimant's account and bought and sold stock without authorization. Claimant alleged that the trading in his account was unsuitable. Claimant alleged that Balog "tricked" Claimant into signing a margin agreement. Claimant asserted that because of Balog's deception and Claimant's lack of knowledge of the subsequent margin trading, Claimant is not responsible for the accrued interest. Claimant alleged that during the entire period that Balog was Claimant's broker, Claimant asked for information from Balog regarding his account, but that such information was never received by Claimant. Claimant alleged that he has suffered losses caused by Balog's unauthorized sale of Maryland Federal Bankcorp stock. Claimant alleged that the transactions by Balog in Claimant's account were conducted for the purpose of churning Claimant's account, thus yielding commissions to Balog. Claimant alleged that the investments made by Balog, were reckless and unsuitable for Claimant's investment needs. Claimant alleged that despite Respondent being put on notice of Balog's misconduct, it failed to take any action to protect Claimant's interest.

Respondent categorically denied all allegations of wrongdoing. Respondent maintained that Claimant's investment objective was long term growth, income and speculation. Respondent maintained that Claimant knew Balog for two years before Claimant opened an account with Respondent. Respondent maintained that Claimant told Balog that he wanted to invest aggressively. Respondent maintained that the Claimant authorized the sales of Maryland Bankcorp. Respondent maintained that Claimant received a "Confirmation of Securities Transaction" after each transaction. Respondent maintained that Claimant's second sell off of his Maryland Bankcorp shares were sold in an unsolicited fashion and that the sale resulted in a realized gain. Respondent maintained that Claimant made several unsolicited transaction, including a Sale of Fidelity Medical Inc. Respondent maintained that it is disingenuous for Claimant to seek damages on the declining principal in the Fidelity Medical Inc. investment when he sold a sizeable position in an unsolicited fashion. Respondent maintained that Claimant chose to hold onto the Fidelity Medical investment as it was declining in value and failed to mitigate his damages. Respondent maintained that Claimant was an active participant in the investment making process authorizing every transaction in his account. Respondent maintained that all investment were suitable for Claimant. Respondent maintained that although Claimant eventually voiced his displeasure with Balog's performance, he never voiced any displeasure with Balog or the resident branch manager for the prior thirteen month period in which Claimant received records of every transaction and monthly account records. Respondent maintained that it is not responsible for Claimant's dissatisfaction with the performance of his investments. Respondent asserted the following additional affirmative defenses: Claimant authorized, accepted and/or

ratified the transaction of which he now complains; any losses sustained by Claimant were due to market conditions and to Claimant's investment decisions; the claim is barred by the doctrines of laches, waiver and estoppel; and Claimant assumed the risks associated with the investments of which he now complains.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$42,314.86, plus interest, costs and attorney's fees. Claimant also requested punitive damages in the amount of three times Claimant's loss.

Respondents requested judgment in their favor, that they be awarded costs, expenses and reasonable attorneys 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.

Scott T. Balog was not a party to these proceedings in that a petition for bankruptcy was filed by or against Balog on December 2, 1993 and that order for relief was entered under chapter 7.

At the hearing, the Panel decided to remove all exhibits attached to Scott T. Balog's filing entitled Discharge of Debtor so that the only filings of Balog in Arbitrator's Exhibit One are his letter to the NASD, Inc. dated April 14, 1994 and a one page filing entitled Discharge of Debtor dated April 6, 1994.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to Claimant Robert J. Petrlik and shall pay to him the amount \$39,359.21; exclusive of interest.
2. That Claimant's claim for punitive damages is denied.
3. That Claimant is awarded attorney's fees in the amount of \$10,012.50. This award of attorney's fees was supported at the hearing by an affidavit of counsel as well as Claimant's counsel's verbal representation of charges up and through the day of the hearing.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(4 sessions X \$750) + \$200 filing fee = \$3,200

Amount previously paid by Claimant: \$200 Claim filing fee and \$750 hearing session deposit

Forum Fees Assessed Against: Respondent

Respondent is directed to refund to Claimant his filing fee and hearing session deposit, so that the amount to be refunded to Claimant by Respondent is \$950.

Respondent shall pay additional forum fees to the National Association of Securities Dealers, Inc. in the amount of \$2,250.

**By The Arbitration Panel:**

Dated:

4/25/95

/s/

J. Martin McDonough, Jr. Presiding  
Public Arbitrator

4/25/95

/s/

Patrick Sean Dolan  
Public Arbitrator

4/25/95

/s/

George R. Hannaway  
Industry Arbitrator

Date Award Served By the NASD: April 28, 1995