

N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Suresh Wattamwar, Trustee and Administrator of  
Shri Drug Yojoo Pharmacy, Inc. Profit Sharing  
and Pension Plan

94-01017

Name of Respondents

Prudential Securities Inc  
Robin Bhattacharya

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**REPRESENTATION**

For Suresh Wattamwar (hereinafter referred to as "Claimant") appeared Krishnan Chittur, Esq., New York City, New York.

For Respondents Prudential Securities, Inc. ("Prudential") and Robin Bhattacharya ("Bhattacharya") (hereinafter collectively referred to as "respondents") appeared Arthur Baumgartner, Esq., in house counsel with Prudential Securities, Inc., New York City, New York.

**CASE INFORMATION**

The Statement of Claim was filed on March 17, 1994. Claimant executed a Uniform Submission Agreement on March 11, 1994.

The Joint Statement of Answer of the Respondents was filed on October 3, 1994. Respondent Prudential's Submission Agreement was signed on October 3, 1994. Respondent Bhattacharya's Submission Agreement was signed on November 1, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference:	July 14, 1995	-	One Session
Hearing Dates/Sessions:	December 21, 1995	-	Two Sessions
	December 22, 1995	-	Two Sessions
	December 28, 1995	-	Two Sessions

The hearings in this matter were conducted in New York City, New York.

### **CASE SUMMARY**

Claimant alleged that on or about June 1, 1991, the Shri Drug Yojoo Pharmacy Inc. Profit Sharing Plan and Pension Plan ("Retirement Plans") worth approximately \$274,987 were transferred to respondents. Claimant also alleged that written guidelines reflecting the parties' understandings concerning the management of the Retirement Plans were simultaneously drafted which provided in part that respondents would manage the funds up to \$100,000.00, and have the balance managed by a portfolio manager of respondent Prudential Securities; that the investments would follow respondent Prudential's recommended asset allocation for retirement funds; no high risk securities would be purchased; and that there would be a 15% Stop Loss Order on all purchases.

It was further alleged by Claimant that in June, 1992, Claimant phoned respondent Bhattacharya for a performance review. At that time respondent Bhattacharya allegedly informed claimant that under his management, the Retirement Plans' returns had exceeded 30%. Thereafter, in January, 1993, claimant inquired as to a purchase in Enzon Corporation which appeared to be a high risk security respondents had purchased for claimant's account. Respondent Bhattacharya allegedly advise claimant that Prudential highly recommended Enzon as a safe stock that would appreciate within 18 months. Claimant alleged that because this purchase appeared to be in contradiction to the guidelines the parties had agreed upon he contacted respondents and was advised that the security had not been designated as "high risk" at the time of the Plans' purchases.

Moreover, Claimant alleged that on March 16, 1993, he again met with respondent Bhattacharya for a performance review of the account. At that time it allegedly became apparent to Claimant that the accounts' returns were less than 2%, not 30% as respondents had previously maintained. Claimant contends he reviewed the Plans' Account Statements and discovered that respondents had been routinely using the Retirement Plans' funds to trade high risk securities.

Claimant alleged that respondents violated explicit instructions by purchasing high risk securities for the Retirement Plans which were unsuitable for the Retirement Plans and inconsistent with the plans' investment objectives. Claimant also alleged that by their conduct, respondents misrepresented the securities purchased for claimant's account; omitted to state material facts; engaged in unauthorized trading; and breached their fiduciary and contractual obligations.

Respondents, Prudential and Bhattacharya, denied all allegations of wrongdoing asserted by claimant in the statement of claim. Respondents maintained that claimant has based his entire claim upon respondents failure to follow written guidelines claimant allegedly drafted. Respondents also maintained that they had no knowledge of the existence of such written guidelines. Respondents maintained that a review of the securities in claimant's account revealed that investments in the accounts were in accordance with the account objectives of preserving principal while achieving growth in the accounts. Further, respondents maintained that none of the investments purchased for claimants' accounts could be deemed "high risk" investments. Respondent maintained that the purchase of blue chip stocks, closed-end mutual funds, and term trusts investing in AAA paper were indeed suitable investments and appropriate for accounts wishing to preserve principal and achieve income.

Respondents denied that any of the securities purchased for claimant's account were unauthorized. Respondents maintained that prior to each trade in the accounts, respondent Bhattacharya discussed the trades with claimant who authorized the purchases. Further, respondents maintained that claimant is not

entitled to damages in this matter. Claimant allegedly made a \$77,000 profit in one account and lost a small amount in the other. Respondents maintained that a majority of the investments in his account were undisputedly in accordance with claimant's stated account objectives. In those instances in which claimant assumed some risk, respondents maintained that claimant was informed as to the pluses and minuses of assuming this risk, prior to making the purchases.

### **RELIEF REQUESTED**

Claimant requested an award against respondents awarding claimant compensatory damages in the amount of \$93,760.15; ordering respondent Prudential Securities to repurchase the securities of Enzon Corp. from claimant for the sum of \$65,000; awarding claimant attorneys' fees and expenses in such amount as the panel deems appropriate; and for such other relief as may be appropriate.

Respondents requested that the panel dismiss the Statement of Claim in its entirety for failing to state a claim and declare that respondents Prudential Securities, Inc. and Robin Bhattacharya are not liable to the claimant in any respondent, in law or equity, upon the evidence presented; the arbitration panel grant such other relief as appropriate.

### **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.

### **AWARD**

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

1. All claims be and hereby are dismissed with prejudice.
2. Each party shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

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

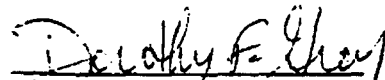
\$300 x 1 session	=	\$ 300.00
\$750 x 6 sessions	=	<u>\$4500.00</u>

\$4800.00 - \$750.00 hearing session deposit = \$4,050.00

Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the NASD, Inc. the sum of \$4,050.00 representing forum fees assessed by the arbitrators.

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

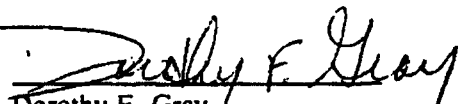
Concurring Arbitrators' Signatures  
Name

  
Dorothy F. Gray, Esq.  
Chairperson - Public Arbitrator

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Carl W. Klemme  
Public Arbitrator

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Andre E. Briod, Esq.  
Industry Arbitrator

I, Dorothy F. Gray, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
Dorothy F. Gray

NASD Date of Decision: March 29, 1996

Concurring Arbitrators' Signatures  
Name

Dorothy F. Gray, Esq.  
Chairperson-- Public Arbitrator

Carl W. Klemme  
Carl W. Klemme  
Public Arbitrator

Andre E. Briod, Esq.  
Industry Arbitrator

I, Carl W. Klemme, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Carl W. Klemme  
Carl W. Klemme

NASD Date of Decision: March 29, 1996

Concurring Arbitrators' Signatures  
Name

Dorothy F. Gray, Esq.  
Chairperson - Public Arbitrator

Carl W. Klemme  
Public Arbitrator

Andre E. Briod  
Andre E. Briod, Esq.  
Industry Arbitrator

I, Andre E. Briod, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Andre E. Briod  
Andre E. Briod

NASD Date of Decision: March 29, 1996