

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Judith K. Marshman

and

94-01745

Name of Respondent

Prudential Securities, Inc.
Stephen R. Kull

REPRESENTATION OF PARTIES

Judith K. Marshman ("Claimant") was represented by David L. Lee, Esq., Chicago, Illinois.

Prudential Securities, Inc. ("**Respondent Prudential**") was represented by Elizabeth H. Lindh, Esq., Keesal, Young & Logan, Long Beach, California.

Stephen R. Kull ("**Respondent Kull**") was represented by Elizabeth H. Lindh, Esq., Keesal, Young & Logan, Long Beach, California for the time period he was employed at Prudential Securities, Inc. For the time period that he was employed at Thomson McKinnon Securities, Inc., Respondent Kull appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about May 11, 1994. Submission Agreement of Claimant Judith K. Marshman was signed on October 4, 1994.

Statement of Answer was filed by Respondent Prudential Securities, Inc. and Respondent Stephen Kull on or about September 27, 1994. Submission Agreement of Respondent Prudential Securities, Inc. was signed on October 28, 1994 by Stuart Abrams.

Additional response for period of time account was held at Thomson McKinnon Securities, Inc. was filed by Respondent Stephen R. Kull on or about October 25, 1995. Submission Agreement of Respondent Stephen R. Kull was signed on November 9, 1994.

HEARING INFORMATION

The hearing was held on Tuesday, November 7, 1995 in Chicago, Illinois for two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent Kull had put her into unsuitable investments. Specifically, Claimant alleged that the investments in Biomet Incorporated were unsuitable in that they were contrary to her investment objectives of generating income and preserving her capital. Claimant also alleged that the purchases were unsuitable because they were made while carrying a margin debit.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that if Respondent Kull were to have sold all of the Claimant's open positions when she transferred in the account from Merrill Lynch, Pierce, Fenner & Smith, Inc., the Claimant would not have had enough cash to generate the type of income that she was withdrawing from her account. With respect to the allegation that the purchase of Biomet was unsuitable, Respondents stated that the final purchase of an additional 2000 shares was unsolicited and contrary to the recommendation of Respondent Kull.

In the Additional response for period of time account was held at Thomson McKinnon Securities, Inc., Respondent Kull denied all of the allegations set forth in the Statement of Claim and incorporated the Answer previously filed.

RELIEF REQUESTED

Claimant requested an award in the amount of \$110,00 for lost opportunity costs and/or unsuitability and/or malpractice; \$33,493 for margin interest lost; \$22,537 for capital loss on Biomet; \$5,500 for lost opportunity costs for Biomet; unknown amount of commissions for Biomet; \$250,000 in punitive damages; reasonable attorneys' fees; and costs.

Respondents requested that the claims asserted against them be denied in their entirety.

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 original(s) 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Judith K. Marshman. Respondents Prudential Securities, Inc. and Stephen Kull shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$750 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **assess** the non-refundable member surcharge in the amount of \$200. The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by Respondent Prudential Securities, Inc. **Fees are payable to the National Association of Securities Dealers, Inc.**

/s/ David Muschler, Esq.
David Muschler, Esq.
Public Arbitrator, Presiding Chair

Dated: November 16, 1995

/s/ Mary Beth Wheeler, Esq.
Mary Beth Wheeler, Esq.
Public Arbitrator

November 16, 1995

/s/ Robert H. Stachura, CPA
Robert H. Stachura, CPA
Industry Arbitrator

November 20, 1995