

**NASD Regulation, Inc. Award**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Donald R. & Rosena Bell

and

94-01826

Name of Respondent

Prudential Securities, Inc.,  
Daniel Zessinger, and  
Sandra Logay

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**REPRESENTATION OF PARTIES**

Claimant's Donald and Rosena Bell ("Claimant's") were represented by Steven H. Akre, Esq., of Lewis, Rice & Fingerish, located in St. Louis, MO.

Respondent Prudential Securities, Inc. ("Prudential"), was represented by H. Todd Iverson, Esq., of Danhenbring, Greiman, Osterholt & Hoffman, located in Clayton, Mo..

Respondent Daniel Zessinger ("Zessinger") was not represented by counsel or present at the hearings, his last known address was located in Marion, IL.

Respondent Sandra Logay ("Logay") was represented by Matthew V. Bartle, Esq., and Brian Cave, located in Kansas City, MO.

**CASE INFORMATION**

Claimant's Donald and Rosena Bell filed the Statement of Claim on or about May 17, 1994, and signed the Submission Agreement of Claimant on July 1, 1994.

Respondent Prudential filed the Statement of Answer on or about December 22, 1994. Respondent Zessinger did not file a Statement of Answer. Respondent Zessinger did not file a Statement of Answer. Respondent Logay filed a Statement of Answer on January 4, 1995. Prudential did not sign the Submission Agreement of Respondent. Respondent Logay did not sign a Submission Agreement of Respondent.

## **HEARING INFORMATION**

No pre-hearing conference was held.

The Arbitration Panel held a hearing on May 12, 1998 in St. Louis for a total of one (1) session.

## **CASE SUMMARY**

In their statement of Claim, Claimant alleged that: On or about July, 1991 through May, of 1992, Respondent Zessinger engaged in numerous unauthorized trades on the margin in unsuitable securities; Respondent Zessinger constantly misrepresented the nature of the transactions being made in Claimants' accounts; Respondent Zessinger sent by mail false and misleading confirmations, action advisories, statements and other documents to Donald Bell who was monitoring his infirm elderly mother's account; Respondent Logay, the branch manager, did not take appropriate action against Zessinger; Respondent Prudential did not take any disciplinary action against Zessinger, even though he had amassed twelve (12) complaints against him before gaining the Claimants as clients; Zessinger without authorization made numerous trades in Centocor and National Medical, and liquidated all of the Bells's conservative, income producing positions, including Bell Telephone, Con Edison, Detroit Edison, Exxon Corp., MFS Government Markets Income Trust, MFS Multi-Market Income Trust, Putnam Master Intermediate Income Trust, St. Francis Medical, Union Electric, Ohio Edison, Southern Company, and Toro Company; the total loss of the trades engaged in by Zessinger amounted to \$130,831.78, not including margin expenses plus interest charged by Prudential; with interest realized losses would amount to not less than \$ 170, 000; and the conduct engaged in by Zessinger and his supervisors violated the internal guidelines of Prudential relating the handling of customer accounts.

Prudential denied the allegations set forth in the Statement of Claim. Prudential asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the doctrines of res judicata, ratification, and collateral estoppel; Claimants, at all relevant times, had or should have had full knowledge of all material facts concerning the investments they made, including the nature of the investments and the associated risks; Claimants directed and authorized the execution of all transactions in the accounts and, therefore, are estopped from bringing this action; Prudential did not make any misrepresentations or omissions with respect to the investments made in Claimants' accounts; Claimant knew of the alleged untruths or omissions and are therefore barred from bringing this action; she did not know, and in the exercise of reasonable care could not have known, of the alleged untruths or omissions; she is not liable for any losses and diminution because they were the risks Claimants chose to assume; to the extent Claimant's investments have diminished in value, such diminution is the result, in whole or in part, of the unforeseen price fluctuations in volatile securities markets in which Claimants knowingly and willingly participated; the allegations relating to punitive damages are merely conclusory and fail to set forth facts sufficient to state a claim for recovery of such damages; Claimants' claims are barred, in whole or in part, by applicable statutes of limitations; the purported wrongdoing was not the proximate cause of the

losses for which Claimants seek recovery; Claimants have not incurred any damages arising from the actions of Logay; Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably, prudently, and responsibly bar any recovery of damages; Claimants failed to mitigate their damages; Claimants' claims fail because they have not sustained any legally recognizable loss or damage; Claimants' claims fail because they did not justifiably rely upon any alleged misstatements or omissions ; Claimants' accounts were not invested in contravention to their investment aims; Claimants' demand for punitive damages is barred by the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and Claimants have previously agreed that parties to this arbitration cannot seek punitive damages.

Logay denied the allegations contained in the Statement of Claim. Logay raised the following affirmative defenses: She cannot be held personally liable because she was acting, at all relevant times, within the scope of her employment as a branch manager at Respondent Prudential; the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the doctrines of res judicata, ratification, and collateral estoppel; Claimants, at all relevant times, had or should have had full knowledge of all material facts concerning the investments they made, including the nature of the investments and the associated risks; Claimants directed and authorized the execution of all transactions in the accounts and, therefore, are estopped from bringing this action; she did not make any misrepresentations or omissions with respect to the investments made in Claimants' accounts; Claimant knew of the alleged untruths or omissions and are therefore barred from bringing this action; she did not know, and in the exercise of reasonable care could not have known, of the alleged untruths or omissions; she is not liable for any losses and diminution because they were the risks Claimants chose to assume; to the extent Claimant's investments have diminished in value, such diminution is the result, in whole or in part, of the unforeseen price fluctuations in volatile securities markets in which Claimants knowingly and willingly participated; the allegations relating to punitive damages are merely conclusory and fail to set forth facts sufficient to state a claim for recovery of such damages; Claimants' claims are barred, in whole or in part, by applicable statutes of limitations; the purported wrongdoing was not the proximate cause of the losses for which Claimants seek recovery; Claimants have not incurred any damages arising from the actions of Logay; Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably, prudently, and responsibly bar any recovery of damages; Claimants failed to mitigate their damages; Claimants' claims fail because they have not sustained any legally recognizable loss or damage; Claimants' claims fail because they did not justifiably rely upon any alleged misstatements or omissions ; Claimants' accounts were not invested in contravention to their investment aims; Claimants' demand for punitive damages is barred by the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and Claimants have previously agreed that parties to this arbitration cannot seek punitive damages.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$ 130,000 against Prudential, Zessinger,

and Logay, jointly and severally for trading losses incurred, and commissions and margin interest wrongfully charged to their Prudential accounts, the amount to compensate the Bells for the profits that would have earned on their accounts had they been properly handled, together with interests, which amounts would be proven at the hearing, attorneys' fees, Punitive damages in the amount of \$ 3,000,000, jointly and severally against Prudential, Zessinger and Logay, Trebled damages under Federal RICO statute, and further relief as the arbitrators may have deemed just and proper.

Prudential and Logay denied the claims asserted against them and asked the panel to award them costs and attorneys' fees, and that the claims be dismissed in its entirety and requested that an award against Claimant Donald Bell for indemnification or contribution or any award made to Claimant Mrs. Bell.

In their separate counterclaims, Prudential and Logay asked for indemnification or contribution against Donald Bell for indemnification or contribution to any award made to Roseana Bell.

In his response to the Counterclaim of Logay, Donald Bell realleged the claims made in his Demand for Arbitration and Statement of Claim. Donald Bell denied any basis for an award of indemnification or contribution against him.

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

On or about January, 1995, Prudential made a Motion to Stay Arbitration to resolve the question of whether Claimants can arbitrate the claims asserted against Prudential from the State Court in Colorado. The arbitrators granted the request, and the arbitration was placed on "inactive" status until December 19, 1996. On or about December 10, 1996, the NASD was notified of the Appellate Court decision denying the issues raised by Prudential.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Zessinger has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Zessinger had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Claimants and Respondents Prudential and Logay reached an agreement to resolve their dispute prior to the hearing in this matter. The hearing on May 12, 1998 went forward as to Respondent Zessinger.

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 NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

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

1. On May 12, 1998, the hearing of the above referenced arbitration matter was convened in St. Louis, County, Missouri. At the inception of the hearing, the arbitration panel was informed that the Claimants had reached a settlement with Respondent, Prudential Securities and Sandra Logay.
2. The arbitrators were further informed by counsel for Claimants that Respondent Zessinger had been properly served with the Statement of Claim in this matter and had failed to file any response whatsoever. Respondent Zessinger had further been mailed and hand-delivered (to his last known address) notice of the hearing. The records of the NASD provided to the panel did not indicate otherwise.
3. Counsel for the Claimants requested leave to file the Request for an Arbitration Award against Respondent Zessinger. Proposed findings of fact, Conclusions of Law and Arbitration Award were filed by counsel for Claimants on or about May 27, 1998 claiming actual damages in the amount of \$140,244.42 plus loss of revenue at 19.63% for a total loss of \$497,139.35. Per the request of the arbitration panel at the hearing, counsel for the Claimants represented that such amounts take into account the amounts recovered from Respondents Prudential Securities and Sandra Logay in settlement.
4. On the basis of the above, the documents filed in this matter and the representations of counsel at the arbitration hearing, an award is entered in favor of Claimants against Respondent Zessinger only, in the amount of \$243,000.
5. At the arbitration hearing, counsel for Claimants and Respondents Prudential Securities and Sandra Logay represented that they had not specifically discussed payment of the forum fees and costs but that they would reach a settlement on that matter within thirty days of receiving a cost bill from the NASD. On the basis of such representation, no additional forum fees or costs were awarded herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each preheating conference, if any. There was one (1) hearing session x \$1,000 = \$1,000 in forum fees. Pursuant to Rule 10332(b) of the Code, 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants. The status of the deposit retention will not change until notice by the parties pursuant to Paragraph 5 of the Arbitrators' Award.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Prudential. The status of the deposit retention will not change until notice by the parties pursuant to Paragraph 5 of the Arbitrators' Award.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Sandra Logay. The status of the deposit retention will not change until notice by the parties pursuant to Paragraph 5 of the Arbitrators' Award.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

Paul A. Grana  
Paul A. Grana  
Public Arbitrator, Presiding Chair

/s/

July 27, 1998

Charles Clardy  
Charles Clardy  
Public Arbitrator

/s/

August 2, 1998

Timothy M. Kelly  
Timothy M. Kelly  
Industry Arbitrator

/s/

July 31, 1998