

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Wayne Monteith

v.

CASE NO.  
94-02050

Name of Respondent(s)

Prudential Securities Inc  
Joseph Brunori

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**REPRESENTATION**

For Claimant, Wayne Monteith ("Claimant") appeared Leon B. Piechta, Esq. from O'Donnell Kennedy Vespole Piechta et al located in West Orange, New Jersey.

For Respondents, Prudential Securities, Inc. and Joseph Brunori ("Respondents") appeared Gary Klein, Esq. from Prudential Securities, Inc. located at New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on June 2, 1994.

Claimant's Submission Agreement was signed on May 24, 1994.

Statement of Answer was filed by Respondent, Prudential Securities, Inc.'s on November 11, 1995

Statement of Answer was filed by Respondent, Joseph Brunori's on November 14, 1995.

Respondents did not submit executed Submission Agreements but are subject to NASD jurisdiction.

**HEARING INFORMATION**

Hearing Dates/Sessions:

November 30, 1995 - 2 Sessions

January 3, 1996 - 2 Sessions

Hearing Location: NASD, Inc. office located at 33 Whitehall Street, 8th Floor, New York, New York, 10004.

**CASE SUMMARY**

Claimant, alleges that Respondents Prudential Securities, Inc. ("PSI") and employee, Joseph Brunori ("Brunori"), managed his personal account trading in Conesco options. In September, he received a notice that \$2500 was owed and if his account was not kept current, his holdings would be sold to satisfy the deficiency. Claimant stated that upon receipt of the notice, he attempted to reach Brunori to resolve

the shortfall. Claimant alleges that Brunori did not respond until September 22, 1992, at which time funds were overnighted to correct the deficit in the account.

Claimant further maintains that after September 22, 1992 Brunori assured him that all previous margin calls could be ignored and that Claimant still retained his ownership in the stock options. Claimant argues that he later requested the sale of certain amounts of his holdings and was not advised at any point that there was a problem. In subsequent transactions, claimant instructed Brunori to buy Conesco options using funds available in the account and it was represented to him that the transactions were completed.

In late October, Claimant withdrew funds from the account and a check for \$6000.00 was issued. Claimant discovered that PSI refused to honor said check. It was at this point, Claimant contends, that he was told that PSI had liquidated his position in September to satisfy a margin call.

Claimant argues that based on the actions and representations of Brunori, the employee agent servant of PSI, his account should be adjusted \$83,125.00 the proceeds from his stock option positions that were improperly sold. Claimant also seeks compensatory and punitive damages exceeding \$200.00.

Respondents defend by denying each and every allegation of wrongdoing charged by Claimant. Respondents contend that Claimant seeks damages based on allegations that his stock option positions were improperly sold by an employee Brunori of PSI as a result of PSI's failure to provide adequate supervision.

Respondents maintain that on at least six different occasions Claimant, a seasoned investor, failed to satisfy margin calls for trades in Conesco stock options which he authorized. The "calls for additional margin" reserved to PSI the right to liquidate positions without notice to the extent necessary to protect the firm's asset.

When, after proper notice and an extension of an additional thirty days, Claimant still failed to respond to another margin call, PSI liquidated his position on September 2, 1992 and September 3, 1992 for an amount \$561.32 less than PSI was owed. Claimant was notified of the liquidation and the reasons therefor.

Claimant also received his September statement showing the closure of his position. Thus when Claimant requested Respondent Brunori to sell his options he already knew or should have known that his previous stock options were liquidated. Claimant also admitted that he was told by respondent Brunori in November of the liquidation of his position.

#### **RELIEF REQUESTED**

Claimant requested actual and compensatory damages of \$83,125.00 and punitive damages in excess of \$200,00.00.

Respondents requested that all claims be dismissed in all respects.

#### **AWARD**

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

1. All claims are dismissed in their entirety;

Dissenting Arbitrator's Signature  
Name

  
Martin Jay Siegel, Esq.

Public/Industry

Executed on:  
Date of Decision: 3/17/96

RECIPIENTS:

Martin Jay Siegel, Esq.  
William E.S. Browning, Esq.  
Sandra Gale Behrle, Esq.

Date of Decision: March 18, 1996

2. Respondent, Prudential, is liable for all forum fees.

**FORUM FEES**

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

Nonrefundable filing fee:	\$ 150.00
Hearing Session Deposit (\$500.00 x 4 Sessions)	\$2000.00
Section 45 Surcharge	\$ 200.00
<b>Total Fees</b>	<b>\$2350.00</b>

1. Claimant paid \$950.00

2. Respondent owes \$950.00 payable directly to Claimant and \$1,400.00 payable to the NASD.

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

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Martin Jay Siegel, Esq.  
Chairperson

Public

\_\_\_\_\_  
Sandra Gale Behrle, Esq.

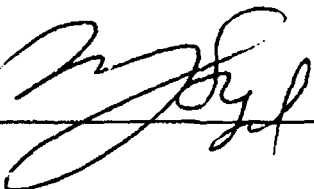
Public

\_\_\_\_\_  
William E.S. Browning, Esq.

Industry

**AFFIRMATION**

I, *Martin J Siegel*, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
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Concurring Arbitrators' Signatures

\_\_\_\_\_  
Martin Jay Siegel, Esq.  
Chairperson

Public

  
Sandra Gale Behrle, Esq.


Public

\_\_\_\_\_  
William E.S. Browning, Esq.

Industry

**AFFIRMATION**

I, SANDRA GALE BEHRLE do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



Date of Decision: March 18, 1996

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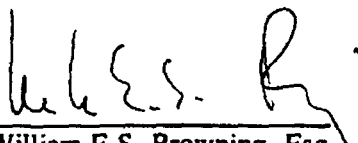
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Martin Jay Siegel, Esq.  
Chairperson

Public

\_\_\_\_\_  
Sandra Gale Behrie, Esq.

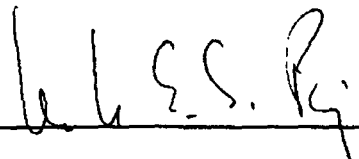
Public

  
\_\_\_\_\_  
William E.S. Browning, Esq.

Industry

**AFFIRMATION**

I, William E.S. Browning, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
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Date of Decision: March 18, 1996