

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dimitar Nikolov

94-03971

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION

For claimant Dimitar Nikolov ("claimant") appeared Martin Domb, Esq. of the law firm of Hill Betts & Nash located in New York, New York.

For respondent Prudential Securities, Inc. ("respondent") appeared Andrew Sidman, Esq. of the law firm of Butler, Fitzgerald & Potter located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on September 26, 1994. Claimant's Submission Agreement was signed on September 9, 1994.

Statement of Answer was filed on December 14, 1994. Amended Statement of Answer was filed on November 1, 1995. Respondent's Submission Agreement was signed on December 9, 1994.

HEARING INFORMATION

Pre-Hearing Conference: October 6, 1995

Hearing Dates/Sessions:	January 11, 1996	-	2 Sessions
	January 12, 1996	-	1 Session
	March 14, 1996	-	2 Sessions
	April 11, 1996	-	2 Sessions
	April 12, 1996	-	2 Sessions
	May 23, 1996	-	1 Session
	May 24, 1996	-	1 Session
	July 3, 1996	-	2 Sessions
	July 16, 1996	-	2 Sessions

The hearings conducted on January 11, 1996, January 12, 1996, May 24, 1996, July 3, 1996 and July 16, 1996 were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York. The hearings conducted on March 14, 1996, April 11, 1996 and April 12, 1996 were held at the City Midday Club located at 140 Broadway, New York, New York. The hearing conducted on May 23, 1996 was held at Fraunces Tavern located at 54 Pearl Street, New York, New York.

CASE SUMMARY

Claimant asserted that respondent made two disbursements, each in the amount of \$330,000.00, from his account at Prudential, which he did not authorize, and that respondent was careless in making these disbursements without adequately confirming whether in fact they had been authorized by him.

With respect to the first disbursement, claimant asserted that he signed a letter of authorization ("LOA") authorizing the disbursement of \$130,000.00 to a corporate account in Aruba belonging to Sylvia J. Rolinski, but that someone, presumably Rolinski, altered the LOA without his knowledge by increasing the amount to \$330,000.00. Claimant further asserted that respondent made the disbursement, based on a fax rather than the original of the LOA, wrongly believing that the Aruba bank account was in his name and, thus, without obtaining approval for the transfer from the Compliance Department, as required of all third party transfers over \$25,000.00.

With respect to the second disbursement, claimant asserted that someone forged his signature on a second LOA, by cutting and pasting his signature from the first LOA, as is evident from an examination of both LOA's. Claimant further asserted that respondent again acted on the basis of a fax of the LOA, still not having received the original of the first LOA requested some 22 days earlier. Claimant also asserted that respondent did not notice a glaring discrepancy in the second LOA, which stated the amount as \$330,000.00 in numbers but only \$330.00 written out.

Respondent denied the material allegations of the Statement of Claim, and asserted that claimant authorized both of the disputed transfers and/or received the benefit of those transfers. With respect to claimant's purported claim under the Uniform Commercial Code ("U.C.C."), respondent asserted that claimant should not be permitted to assert such a claim because it was not raised in the Statement of Claim, that he failed to prove that he did not authorize the transfers and, in any event, that, even if the panel credits claimant's testimony, he is estopped from recovering on that claim due to his own conduct in permitting a friend and business associate to have certain access to his account, and failing to monitor transactions in his account. Respondent further contended that, if claimant is permitted to assert a claim under the U.C.C., his claim for negligence is barred as a matter of law. With respect to that negligence claim, respondent contended that claimant failed to prove that he did not authorize the transfers, or that Prudential acted negligently and, under any circumstances, that such claim is barred under the doctrines of ratification, estoppel and/or contributory negligence.

RELIEF REQUESTED

Claimant requested \$660,000.00, plus costs, arbitration fees and attorneys' fees.

Respondent requested that the Statement of Claim be dismissed in its entirety and that costs, including forum fees and attorneys' fees, be awarded in its favor.

OTHER ISSUES CONSIDERED AND 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. Respondent be and hereby is liable for and shall pay to claimant the sum of \$415,000.00, plus interest at 9% per annum from September 26, 1994 until payment of the award.
2. Claimant's request for attorneys' fees is hereby denied.
3. Respondent's request for attorneys' fees is hereby denied.
4. Each party shall bear their respective costs.
5. All other claims are hereby denied.

FORUM FEES

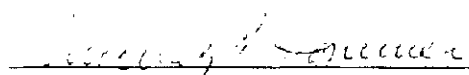
The arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee paid by claimant and have assessed the following forum fees:

1 pre-hearing conference (1 arbitrator)	= \$ 300.00
15 hearing sessions x \$1,000.00	= <u>\$15,000.00</u>
Total fees assessed	= \$15,300.00

1. Claimant be and hereby is liable for and shall pay to the NASD the sum of \$7,650.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with the NASD and, therefore, claimant is liable and shall pay \$6,650.00 to the NASD.
2. Respondent be and hereby is liable for and shall pay to the NASD the sum of \$7,650.00, representing one-half of the total amount of forum fees assessed.

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

ARBITRATORS' SIGNATURES



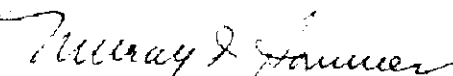
Murray I. Sommer, Esq.
Chairperson-Public Arbitrator

Evonne W.J. Tolbert, Esq.
Public Arbitrator

Mary Ellen Moschetta, Esq.
Industry Arbitrator

Date of decision: September 27, 1996

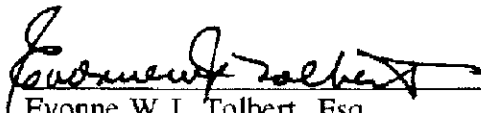
I, **Murray I. Sommer, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Murray I. Sommer, Esq.

ARBITRATORS' SIGNATURES

Murray I. Sommer, Esq.
Chairperson-Public Arbitrator



Evonne W.J. Tolbert, Esq.
Public Arbitrator

Mary Ellen Moschetta, Esq.
Industry Arbitrator

Date of decision: September 27, 1996

I, **Evonne W.J. Tolbert, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Evonne W.J. Tolbert, Esq.

ARBITRATORS' SIGNATURES

Murray I. Sommer, Esq.
Chairperson-Public Arbitrator

Evonne W.J. Tolbert, Esq.
Public Arbitrator

Mary Ellen Moschetta, Esq.
Mary Ellen Moschetta, Esq.
Industry Arbitrator

Date of decision: September 27, 1996

I, Mary Ellen Moschetta, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Mary Ellen Moschetta, Esq.
Mary Ellen Moschetta, Esq.