

N.A.S.D. AWARD**NASD Regulation, Inc. Office of Dispute Resolution****In the Matter of the Arbitration Between****Name of Claimant****Banco Progreso Internacional De Puerto Rico****NASD CASE NO. 95-00336****Name of Respondents****Prudential Securities Incorporated
and Michael P. Schnabel****REPRESENTATION**

For Claimant: Richard E. Brodsky, Esq. of Richard E. Brodsky, P.A., Miami, Florida and Scott L. Warfman, Esq. of Bloom & Warfman, P.A., Miami, Florida.

For Respondents: J. Wesley Holston, Esq. and Sara Soto, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on January 25, 1995. Claimant's Submission Agreement signed on January 18, 1995 by Orlando Castro C., Director of Banco Progreso Internacional De Puerto Rico. Claimant's amended Submission Agreement signed on July 10, 1996 by Felix J. Montanez-Miranda as appointed receiver of Banco Progreso Internacional De Puerto Rico, Inc.

Statement of Answer filed by Respondents Prudential Securities Incorporated ("Prudential") and Michael P. Schnabel ("Schnabel") on May 18, 1995. Respondent Prudential's Submission Agreement signed on May 6, 1998 by Kevin B. Hurley, Senior Vice President of Prudential Securities Incorporated. Respondent Schnabel's Submission Agreement signed on May 6, 1998.

HEARING INFORMATION

On December 19, 1995, June 24, 1996, July 11, 1996 and May 2, 1997, telephonic pre-hearing conferences lasting 1 session each were conducted with the Chairperson of the arbitration panel. On July 16, 17 and 18, 1996; December 17, 18, 19 and 20, 1996; May 12, 13, 14 and 15, 1997; August 11, 12, 13 and 14, 1997; October 6, 7, 8, 9, 29 and 30, 1997; January 12, 13, 14 and 15, 1998; and March 16, 18 and 19, 1998, in Fort Lauderdale, Florida, hearings lasting 55 sessions were conducted.

CASE SUMMARY

Claimant alleged the following: that Banco Progreso Internacional De Puerto Rico ("Banco Progreso" or "the bank") was an international banking entity organized under the laws of the Commonwealth of Puerto Rico; that during 1992 and 1993, Banco Progreso maintained an account at the Miami, Florida

office of Prudential; that Banco Progreso lost over \$5 million in the account, primarily in connection with purchases of long call options; that the losses suffered by Banco Progreso were caused by unsuitable recommendations by Prudential and the Account Executive, Michael Schnabel, and by the failure of responsible Prudential officials to properly supervise the conduct of the Account Executive, particularly in reference to options; that, in particular, Respondents improperly induced and permitted the bank to engage in excessive speculative transactions in options, and that Prudential violated internal SRO-imposed standards governing the supervision and review of options accounts.

Respondents denied that they have any liability to the Claimant and alleged the following: that the Claimant was an institution that was always fully aware of the risks and trading that occurred in its account; that at all times, Claimant's account was closely controlled by both its Executive Vice-President and President; that all purchases and sales in Claimant's account were ordered and authorized by either its Executive Vice-President or its President; that after Claimant's account was open for five months, Claimant told Respondents that its investment objectives now included speculation and that it desired to trade in the options market; that while engaging in speculative options trading with Respondents, Claimant engaged in a similar speculative pattern of trading options and stocks at another major brokerage firm; that at all times, Claimant's account was diligently supervised by Prudential's branch manager and compliance department; that they made every effort to ensure that the Claimant understood the nature of the activity it was engaging in, could bear the risk of such activity, wished to continue to engage in such activity, and was legally authorized to engage in such activity; that when Claimant failed to agree to a strategy that would limit its losses, Respondents restricted the speculative trading in Claimant's account; that Claimant, unhappy with this restriction, subsequently transferred its account to another brokerage firm and continued to speculate in options and stocks; and that Claimant continued to trade with Respondents after suffering losses and, therefore, failed to mitigate its damages.

RELIEF REQUESTED

Claimant requested pecuniary damages against Respondents, jointly and severally, in the amount of \$5,818,194.36 plus statutory interest of 12% per year, from the date that the subject securities were purchased through January 31, 1995, in the sum of \$1,366,592.00; punitive damages in an amount not less than three times the actual pecuniary loss suffered by the Claimant; interest, costs and attorneys' fees; and such other and further relief as is deemed just and proper.

Respondents requested that Claimant's claim be dismissed in all respects, and that the costs and fees of this proceeding be assessed against the Claimant.

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 NASD Regulation, Inc.

At the conclusion of the Claimant's case during the evidentiary hearing, Respondents moved to dismiss the Statement of Claim, which motion was opposed by Claimant. The Panel denied the motion.

AWARD

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

1. Respondents are found liable, jointly and severally, and shall pay compensatory damages to Claimant in the amount of \$390,000.00, inclusive of pre-judgment interest.
2. All other claims for relief, including Claimant's requests for punitive damages and attorneys' fees and the parties' requests for costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$83,700.00 (55 sessions x \$1,500.00 per session, plus 4 pre-hearing conferences with the Chairperson x \$300.00) as follows:

1. Claimant is hereby assessed the sum of \$41,850.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$40,350.00.
2. Respondents are hereby assessed, jointly and severally, the sum of \$41,850.00 for which NASD Regulation, Inc. shall retain the \$9,000.00 hearing session deposit previously paid by Respondent Prudential in partial satisfaction thereof, leaving a balance due in the amount of \$32,850.00.
3. Claimant is also liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing the fee for the postponement of the April 14 - 17, 1997 scheduled hearing dates.
4. NASD Regulation, Inc. shall retain the \$300.00 claim filing fee and \$1,500.00 postponement fee (for the postponement of the November, 1996 scheduled hearing dates) previously paid by Claimant, as well as the \$500.00 member surcharge and \$1,500.00 postponement fee (for the postponement of the March, 1996 scheduled hearing dates) previously paid by Respondent Prudential.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Steven Goerke, Esq.
Chairperson

Public

/s/
Allen J. Kaplan, Esq.

Public

/s/
Irving I. Hanzman

Industry

Date of Decision: May 8, 1998