

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ernest Gottdiener

95-00368

Name of Respondent

Prudential Securities Inc.

REPRESENTATION

For claimant Ernest Gottdiener ("claimant") appeared Lawrence J. Toscano, Esq. of the law firm of Heller, Horowitz & Feit, P.C. located in New York, New York.

For respondent Prudential securities, Inc. ("respondent") appeared Theodore A. Krebsbach, Esq. of the law firm of Kittay, Gold & Krebsbach located in White Plains, New York.

CASE INFORMATION

Statement of Claim was filed on January 23, 1995. Claimant's Submission Agreement was signed on January 19, 1995.

Statement of Answer was filed on March 20, 1995. Respondent's Submission Agreement was signed on April 4, 1995.

HEARING INFORMATION

Hearing Date/Sessions: July 31, 1996 - Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, during January 1993, respondent recommended the purchase of securities of ImmunoGen, Inc. ("IMGN"). Claimant further alleged that, based upon the recommendations, he purchased 10,000 shares of IMGN on January 12, 1993 at \$12.77 and

10,000 shares of IMGN on January 15, 1993 at \$12.51, for a total cost of \$252,809.00

Claimant alleged that, during early February 1993, there was a steep decline in the price of IMGN and that, on February 4, 1993, without notice to him, without any attempt to communicate with him, and without reason or cause, respondent liquidated the positions in his account. Claimant contended that respondent sold 10,000 shares of IMGN at \$6.75, 7,000 shares of IMGN at \$5.50 and 3,000 shares \$5.50 resulting in a credit to his account of \$122,491.00 and a loss of \$130,318.00 from the purchase prices.

Claimant alleged that there was never any need or basis for respondent to liquidate the positions without notifying him and permitting him to provide additional margin for the account. Claimant further alleged that, during 1993, the price of IMGN fluctuated at prices considerably higher than the prices at which his position was sold, reaching as high as \$11.00. Claimant contended that, had his position been sold at that price, his account would have realized \$220,000.00, an increase of \$97,50.00 over the amount actually realized.

Claimant alleged that, by liquidating the account with cause or reason and without notice to him, respondent breached its fiduciary duty to act in his best interest and damaged him in the amount \$97,509.00.

Respondent maintained that their house and NYSE margin maintenance calls are executed through an automated system and that each day this system sends wires to the appropriate branch indicating which accounts are subject to a maintenance call. Respondent further maintained that once an account has a maintenance call, it is authorized, pursuant to the specific language in the margin agreement, to meet the call through liquidation of stock in the account, and furthermore, if the call is not met within a certain amount of time, it must liquidate to meet its internal or NYSE maintenance requirements. Respondent contended that providing a customer with time to cover a maintenance call or notifying a customer of a call is purely a business decision and the margin agreement gives respondent the right to liquidate without notice to the customer.

Respondent contended that claimant initiated the sale of his IMGN stock to the first two house calls which occurred on February 2 and 3, 1993. Respondent further contended that claimant was fully aware that he could cover these various calls either by liquidating stock or transferring funds in, which is how claimant chose to cover the subsequent calls. Respondent maintained that, despite the IMGN liquidations and the funds received, claimant's account ultimately had a net debit balance of \$12,405.52 as a result of the maintenance calls which claimant has not satisfied. Respondent further maintained that interest has been accruing on that amount since February 4, 1993, the date of liquidation.

RELIEF REQUESTED

Claimant requested that he be granted the following relief:

1. damages in the amount of \$97,509 plus interest from February 4, 1993;
2. reasonable attorneys' fees, costs and expenses; and

3. that all forum fees be assessed against respondent.

Respondent requested that:

1. The arbitration panel dismiss the Statement of Claim in its entirety because the claims stated thereunder fail to state a claim upon which relief can be granted;
2. The arbitration panel dismiss the Statement of Claim in its entirety and declare that respondent is not liable to the claimant in any respect, in law or in equity, upon the evidence presented;
3. The arbitration panel award damages to respondent in the amount of \$12,405.52 plus interest from February 5, 1993;
4. Due to the frivolous nature and bad faith filing of the claimant's Statement, that the arbitration panel award respondent reasonable attorneys' fees, costs and expenses, and assess all forum fees against claimant;
5. The arbitration panel grant which further relief as appropriate.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing in this matter, both claimant and respondent withdrew their respective claims for attorneys' fees.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel hereby finds in favor of claimant, but no damages are awarded.
2. Respondent's counterclaim is dismissed in its entirety.
3. Respondent is hereby ordered to remove the debit balance from claimant's account and, if that debit balance has been reported to any credit agency, respondent shall notify that agency of the decision of this panel.
4. The parties shall bear their own costs, including attorneys' fees.
5. All other claims are hereby denied.

FORUM FEES

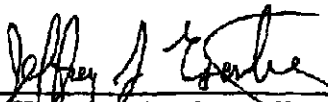
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 filing fee previously deposited by claimant and the \$500.00 filing fee previously deposited by respondent and have assessed the following forum fees:

2 hearing sessions x \$500.00 = \$1,000.00

1. Claimant is hereby liable for the sum of \$500.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$500.00 with the NASD and, therefore, claimant owes nothing to the NASD.
2. Respondent is hereby liable for the sum of \$500.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited \$600.00 with the NASD and, therefore, respondent will be refunded \$100.00.

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

Arbitrators' Signatures



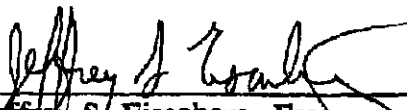
Jeffrey S. Eisenberg, Esq.
Chairperson-Public Arbitrator

Bennett A. Hall
Public Arbitrator

Theodore Brown
Industry Arbitrator

Date of Decision: November 1, 1996

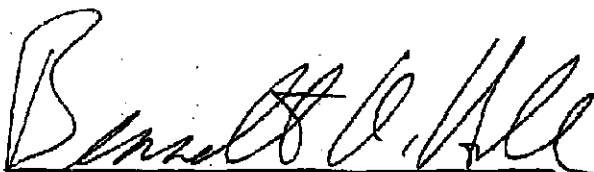
I, Jeffrey S. Eisenberg, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Jeffrey S. Eisenberg, Esq.

Arbitrators' Signatures

Jeffrey S. Eisenberg, Esq.
Chairperson-Public Arbitrator

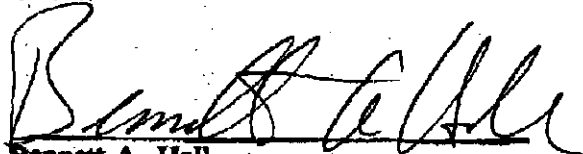
A handwritten signature in cursive script, appearing to read "Bennett A. Hall", written over a horizontal line.

Bennett A. Hall
Public Arbitrator

Theodore Brown
Industry Arbitrator

Date of Decision: November 1, 1996

I, Bennett A. Hall, 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.

A handwritten signature in cursive script, appearing to read "Bennett A. Hall", written over a horizontal line.

Bennett A. Hall

Arbitrators' Signatures

Jeffrey S. Blazenberg, Esq.
Chairperson-Public Arbitrator

Bennett A. Hall
Public Arbitrator



Theodore Brown
Industry Arbitrator

Date of Decision: November 1, 1996

I, Theodore Brown, 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.



Theodore Brown