

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Milton P. Smith

95-00543

Name of Respondents

Prudential Securities, Inc.
Ed Daniel

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 1, 1995 Claimant Milton P. Smith ("Claimant"), who appeared Pro Se, alleged that Respondents Prudential Securities, Inc. ("PSI"), and Ed Daniel ("Daniel"), poorly managed and churned his Individual Retirement Account held by PSI. Claimant further alleged that he indicated to the Respondents that his investments goals were income and preservation of capital to which Daniel, his broker, recommended over-the-counter type growth stocks. Claimant contended that the Respondents' recommendations significantly reduced his retirement funds, and as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents Prudential Securities, Inc. and Ed Daniel, through their representative and in-house counsel, Ronald Jamison, Esq., New York, NY, maintained that Claimant opened and an Individual Retirement Account, #022-R02921, at PSI on or about June 16, 1987, which was managed by Daniel, beginning September 30, 1988. Respondents further maintained that the "churning" charge is without merit because the turnover ratio for the entire history of the account was .45, which is far below the turnover ration of six that most authorities use to establish the presumption of churning. Respondents contended that the Claimant failed to disclose that he made \$91,735.00 in profits in the account during the period for which he claims the losses occurred. Respondents further contended that Claimant rejected advice to place money in Mutual Funds and placed money in stock, and as a result of the above, the Respondents should not be held liable.

RELIEF REQUESTED

Claimant Milton P. Smith, requested \$10,000.00 in actual damages.

Respondents Prudential Securities, Inc. and Ed Daniel, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James B. Eichberg, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Milton P. Smith, on January 26, 1995 and not by the Respondents Prudential Securities, Inc. and Ed Daniel, as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Prudential Securities, Inc. and Ed Daniel, are jointly and severally liable and shall pay to the Claimant Milton P. Smith, \$8,750.00 in actual damages.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Milton P. Smith, shall be retained by the NASD, Inc.

AFFIRMATION

I, JAMES B. EICHBERG, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


James B. Eichberg

DATE OF DECISION: September 15, 1995