

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Joseph J. Dydio

and

Case Number 95-01041

Prudential Securities, Inc., and Mark Andrus

REPRESENTATION OF PARTIES

Claimant Joseph J. Dydio ("Claimant") was represented by Paul J. Sussman, Esq. of the Law Offices of Paul J. Sussman, located in Chicago, Illinois.

Respondent Prudential Securities, Inc. ("PSI") and Respondent Mark Andrus ("Andrus") were represented by Norman L. Ashkenas, Esq. of Prudential Securities Incorporated, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 8, 1995.
Claimant's Submission Agreement was signed on February 16, 1995.

Respondents' Statement of Answer was filed on or about April 27, 1995.
Respondent Prudential Securities, Inc.'s Submission Agreement was signed on June 6, 1995, by Stuart Adams. Respondent Mark Andrus did not file an executed Submission Agreement with the NASD Regulation, Inc. Office of Dispute Resolution.

HEARING INFORMATION

No pre-hearing conference was held. The hearing was held on February 8, 1996, for one (1) session and August 12, 1996, for two (2) sessions in Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondent Andrus while employed by, or acting as agent for Respondent PSI, misrepresented the risks associated with certain investments and guided Claimant into investments which were unsuitable for Claimant's investment objectives. The Statement of Claim specifically alleged that Claimant wanted to invest a little over \$100,000.00 for his children's future college education in a safe manner that would preserve his capital. Dydio further alleged that Respondent

Andrus misrepresented and omitted material facts regarding Lamson & Sessions stock, which Andrus fraudulently high pressured Claimant into purchasing, in violation of the NASD Rules of Fair Practice. Claimant asserted that the losses he sustained were a direct and proximate result of Respondents' improper conduct.

Claimant specifically asserted the following causes of action:

1. Respondents breached their fiduciary relationship with Claimant by conducting business in a fraudulent manner;
2. Respondent PSI failed to adequately supervise Andrus in violation of the Securities and Exchange Act of 1934 and the NASD's Rules of Fair Practice;
3. In their business dealings with Claimant, Respondents violated the antifraud provisions of the Securities and Exchange Act of 1934;
4. Respondents breached their contract with Claimant by selling him unsuitable investments;
5. Respondents negligently sold Claimant unsuitable investments; and
6. Respondents violated Illinois Securities Law by making misleading and fraudulent statements to Claimant in connection with the offer, sale or purchase of a security.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant authorized, ratified, and accepted the transactions of which he now complains, and that any loss Claimant sustained is attributable to market conditions and to his own investment decisions. Respondents asserted multiple affirmative defenses, including the following:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimant, at all relevant times, had or should have had full knowledge of all material facts concerning the investments he made, including the nature of the investments and the associated risks;
3. Prudential Securities did not make any misrepresentations or omissions with respect to the investments made in Claimant's accounts; and,
4. Claimant's accounts were not invested in contradiction to his investment objectives.

RELIEF REQUESTED

Claimant requested an award of actual damages in the amount of \$46,596.33. Claimant also requested an award of punitive damages as allowed. Claimant further requested that Filing Fees and Forum Fees paid to the NASD be refunded to him. Additionally, Claimant requested all other relief deemed just and proper by the panel of arbitrators.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their Costs and Attorneys' Fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Mark Andrus did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original remains on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

- (1) Respondent Prudential Securities, Inc., is liable for and should pay to the Claimant, Joseph J. Dydio, the sum of \$15,000.00 as actual damages;
- (2) The claim for punitive damages is dismissed with prejudice and denied in its entirety;
- (3) That claims against Respondent, Mark Andrus, are dismissed with prejudice and denied in their entirety;
- (4) The parties shall bear their own costs of arbitration, including attorney's fees, except for those specifically enumerated herein;

(5) Any relief not specifically granted is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) sessions x \$400 = \$1200 in forum fees. Pursuant to §10332(b), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Respondent Prudential Securities, Inc. is liable for, and shall pay to NASD Regulation, Inc., Office of Dispute Resolution Forum Fees in the amount of \$1200.00. Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable Filing Fee in the amount of \$120 and shall **refund** the hearing session deposit in the amount of \$400 previously deposited by Claimant Joseph J. Dydio.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid by Respondent Prudential Securities, Inc.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$400 previously deposited by Claimant, Joseph J. Dydio.

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

Dated:

/s/ Colleen Grace, Esq.
Colleen Grace, Esq.
Public Arbitrator, Presiding Chair

September 26, 1996

/s/ Jay K. Buck
Jay K. Buck
Public Arbitrator

September 24, 1996

/s/ Chinna B. Boddipalli
Chinna B. Boddipalli
Industry Arbitrator

October 1, 1996

For NASD Regulation, Inc. Use Only/Date of Service: October 10, 1996