

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Austin Church III, Janey Church, Helen Church  
Towle, both individually and as trustee for the  
Helen Church Towle Revocable Trust Agreement of  
1990 DTD 7-20-94 and Helen Church Towle and  
Austin Church III as trustees for the Albert  
Edward Towle Charitable Remainder Unitrust  
No. 2

95-01323

Name of Respondent

Prudential Securities, Inc.

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REPRESENTATION

For Claimants: K. Michael Swann, Esq. of the law firm of Snyderburn, Rishoi & Swann, Winter Park, Florida

For Respondent: Debra A. Jenks, Esq. of the law firm of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida

CASE INFORMATION

Statement of Claim filed: March 16, 1995

Claimants' Submission Agreements signed on: March 1, 1995

Statement of Answer filed by Respondent on: July 7, 1995

Supplemental Answer to the Statement of Claim filed on: December 11, 1995

The Respondent did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

## HEARING INFORMATION

Sixteen hearing sessions were conducted in this matter on April 29 and 30, 1996, May 1, 2 and 3, 1996, and August 27, 28 and 29, 1996 in Fort Lauderdale, Florida.

## CASE SUMMARY

Claimants alleged that their investment experience was extremely limited overall. Claimants next alleged being totally naive about the risks and downside implications of a margin account, and not being forewarned by their account executive, the Claimants agreed to trade on margin and this decision had devastating financial consequences due to the manner in which the Respondent and the broker managed and traded the Claimants' accounts. Claimants next alleged that instead of attempting to generate income and emphasize safety of principal pursuant to the Claimants' investment objectives, the broker transformed the Claimants into day traders in stocks and speculated with their life savings and excessively traded and mismanaged the accounts for the primary purpose of generating commissions. Claimants next alleged that Respondent through its broker effectively controlled and made virtually all investment decisions and failed to follow any type of disciplined strategy in the "Church" accounts. Claimants next alleged the Respondent through its broker used high pressure tactics urging the Claimant to make quick, rapid decisions in the "Towle" account. Claimants next alleged that the Respondent through its broker recommended to the Claimants to set up a second charitable remainder unitrust and to utilize a Prudential investment program to manage the trust which affiliated a number of money manager firms that could be utilized by the Claimants. Claimants alleged this program was inappropriate and unsuitable for Claimants since it placed the onus of selecting a manager on them, a decision they were not capable of reaching intelligently. Furthermore, the Claimants alleged the Respondent was required to assist the Claimants in thoroughly evaluating and selecting an appropriate money manager and failed to do so knowing that Claimants were incapable of making this decision and caused the trust to incur significant damage. Claimants further alleged the Respondent failed to supervise its broker, made misrepresentations and omissions of facts, breached the fiduciary duty owed to the Claimants, acted in a negligent manner and breached its contract to Claimants to provide securities brokerage services and investment advice to Claimants.

Respondent maintained the Claimants are very wealthy individuals who elected to utilize the value of their stocks to enhance their lifestyle and by the time they opened their accounts with Respondent, they were seeking to generate cash-flow through trading stocks. Respondent next maintained that the broker, in response to a question from the Claimants, reviewed the various aspects of a margin account. Respondent next maintained that every trade in the main accounts at issue was initiated, suggested or otherwise approved by the Claimants and the Respondent sent confirmations for each and every trade, gave Claimants a preferential commission rate, and a favorable margin interest rate. Respondent next maintained that at no time did the Claimants ask to speak to a manager at Prudential or express any dissatisfaction concerning the handling of their accounts. Respondent next maintained that during the majority of the account period, the Claimants' accounts were profitable, and Claimants could have instructed Prudential to liquidate at that point in time; however, they chose not to do so. Rather, Claimants gave instructions to Prudential to continue to trade in stock on margin with full knowledge of the risks

associated therewith. Respondent next maintained that Claimants' losses are attributable solely to the financial demands of their lifestyle and investment decisions and they are not entitled to an award of punitive damages.

### **RELIEF REQUESTED**

Claimants Austin and Janey Church and Helen Towle Church requested damages in the sum of \$730,195.44 plus damages due to margin interest allocation plus interest, punitive damages and the costs of the proceeding. Claimant Albert Edward Towle Charitable Remainder Unitrust II requested damages in the sum of \$116,381.31 plus damages due to margin interest allocation plus interest, punitive damages and the costs of the proceeding.

Respondent requested a dismissal of all claims.

### **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 original(s) remain on file with the NASD.

### **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. The Respondent be and hereby is liable and shall pay to the Claimants Austin Church III and Janey Church the sum of \$39,000.00 plus interest as follows:
  - a. simple interest at the rate of 12% per annum from 10/13/93-12/31/94 totalling \$5,708.57
  - b. simple interest at the rate of 8% per annum from 1/1/95-12/31/95 totalling \$3,120.00
  - c. simple interest at the rate of 10% per annum from 1/1/96-5/1/96 totalling \$1,296.43
2. The Respondent be and hereby is liable and shall pay to the Claimant Helen Church Towle the sum of \$85,000.00 plus interest as follows:
  - a. simple interest at the rate of 12% per annum from 10/13/93-12/31/94 totalling \$12,441.76
  - b. simple interest at the rate of 8% per annum from 1/1/95-12/31/95 totalling \$6,800.00
  - c. simple interest at the rate of 10% per annum from 1/1/96-5/1/96 totalling \$2,825.55
3. All other claims by all other Claimants against the Respondent are dismissed in all

respects.

4. The Claimants' requests for punitive damages are dismissed in all respects.
5. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$16,000.00 (16 sessions x \$1,000.00 per session).

1. Claimants are hereby assessed \$8,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$7,000.00.
2. Respondent is hereby assessed \$8,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$7,500.00.
3. The NASD shall retain the \$250.00 nonrefundable filing fee previously paid by the Claimants to the NASD.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_/s/  
John B. Kelley, Esq.

Public

\_\_\_\_\_/s/  
Janet C. Zweibel

Public

\_\_\_\_\_/s/  
James R. South

Industry

Date of Decision: October 23, 1996