

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Kurt Markstein

Claimant

NASD Arbitration
No. 95-01412

v.

Prudential Securities
Michael Appelbaum

Respondents

REPRESENTATION OF PARTIES

Kurt Markstein ("**Claimant**") represented himself, pro se.

Prudential Securities and Michael Appelbaum ("**Respondent**") were represented by Arthur G. Baumgartner, Prudential Securities, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 22, 1995. Claimant's Submission Agreement was signed on April 12, 1995.

Respondents Joint Statement of Answer was filed on or about June 13, 1995. Prudential Securities Submission Agreement was signed on June 28, 1995. Michael Appelbaum did not sign a Submission Agreement.

HEARING INFORMATION

The hearing was held on April 24, 1996 in San Francisco for a total of 2 sessions.

CASE SUMMARY

Claimant is alleging that the Respondents solicited, through the use of aggressive telemarketing, the purchase of 300 shares of Nextel stock. Additionally, Claimant is alleging that in the Respondents are guilty of misrepresenting the nature of the stock involved, omitting material fact, and breaching their fiduciary duty to the Claimant through the sale of an unsuitable volume of stock.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically argued that Claimant was a very experienced investor with more than 30 brokerage accounts across

the country. Respondents further argued that Claimant has established a pattern of opening an account at a firm, buying stock and subsequently filing complaints if the account losses money.

RELIEF REQUESTED

Claimant requested an award in the amount of \$10,000.00 and an unspecified amount of punitive damages.

Respondents requested that the claims asserted against them be denied in its entirety and that the panel declare that the Respondents are not liable in any respect, in law or equity, to the Claimant. The Respondents further requested attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the undersigned arbitrator have determined that Respondent Michael Appelbaum did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 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.

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. Each and every claim of the Claimant is dismissed;
2. Claimant's request for punitive damages is denied;
2. Respondents request for attorneys' fees is denied;
3. Respondents are awarded and Claimant must pay to Respondents \$1,487.00 in costs associated with this case.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each prehearing conference, if any. There were 2 sessions x \$200 = \$400 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four

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