

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert Hicks,

Claimant,

v.

No. 95-01976

**Prudential Securities Incorporated, and
William Roll,**

Respondents.

REPRESENTATION OF PARTIES

Robert Hicks ("Claimant") was represented by Stuart R. Berkowitz, Esq., of Platke & Berkowitz, St. Louis, Missouri.

Prudential Securities Incorporated ("PSI") and William Roll ("Roll") (collectively referred to as "Respondents") were represented by H. Todd Iveson, Esq., of Dankenbring, Greiman, Osterholt & Hoffmann, St. Louis, Missouri.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about April 18, 1995. Claimant's Submission Agreement was signed on April 12, 1995.

Respondents' Statement of Answer was filed on or about June 19, 1995.

HEARING INFORMATION

The hearing was held on May 8 and 9, 1996 in St. Louis, Missouri for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondents: Failed to exercise prudence in recommending suitable securities, and knowingly and recklessly placed Claimant at risk to incur substantial losses; and churned his account for the primary purpose of generating greater commissions for Respondents. Claimant further alleged that PSI breached its duty to monitor and supervise the activities of Roll in his handling of Claimant's account. The allegations arose out of trading in Claimant's account between July of 1991 and February of 1995 in securities which were fully covered at the hearing of this matter.

Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant failed to state a claim upon which relief may be granted; the claims are barred by the applicable statutes of limitations; Claimant is barred from recovery under the doctrines of waiver, estoppel, ratification and laches; Claimant failed to mitigate his damages; and Claimant's claims for punitive damages and attorneys' fees are not available under governing law.

RELIEF REQUESTED

Claimant requested a joint and several award against the Respondents as follows: For compensatory damages in an amount of \$280,000; interest on losses from the date of the original investments, at the maximum rate allowed by law; attorneys' fees, expert witness fees, filing fees, and any other costs and fees determined by the panel to be fair and just; and punitive damages in an amount to be determined by the panel.

Respondents requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file with the NASD a properly executed submissions to arbitration but are 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 and bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Respondents are jointly and severally liable for, and shall pay to the Claimant, the sum of \$26,400 as an award of compensatory damages.

All other claims/requests for relief are, and each of them, denied with prejudice.

Except as set forth in this Award, each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §43(b) of 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 (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$250 and shall **refund** the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, PSI is liable for, and shall pay to the NASD the member surcharge fee in the amount of \$350.

Additional forum fees in the amount of \$3,000 are assessed jointly and severally against the Respondents.

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

Dated:

Robert M. Livingstone
Robert M. Livingstone
Public Arbitrator, Presiding Chair

/s/

June 15, 1996

Charles Clardy
Charles Clardy
Public Arbitrator

/s/

June 14, 1996

Dale W. Roth
Dale W. Roth
Industry Arbitrator

/s/

June 14, 1996