

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Anthony C. Soviero

Case No. 95-02160

Name of Respondents

Prudential Securities Inc.  
Stewart Melman

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REPRESENTATION

For Claimant, Anthony C. Soviero, Esq. ("Soviero"): Anthony C. Soviero, Esq. of Delray Beach, Florida.

For Respondents, Prudential Securities, Inc. ("PSI") and Stewart Melman ("Melman"): V. Michael Arias, Esq., of Prudential Securities, Inc. of Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed: May 4, 1995, 1995.

Claimant's Submission Agreement signed on: April 25, 1995.

Statement of Answer filed by Respondents, PSI and Melman on: July 14, 1995.

Respondent, PSI's Submission Agreement signed on: February 16, 1996.

HEARING INFORMATION

On February 20, 1996 in Fort Lauderdale, Florida, hearing lasting two sessions was conducted.

### **CASE SUMMARY**

Claimant alleges that on or about October 23, 1992 Melman made an unsolicited recommendation to purchase shares of stock in Hyperion 1997 Term Trust, Inc. ("Hyperion"). Based upon Melman's representations, the Claimant purchased shares equal to approximately \$25,000.

Claimant alleges that the representations of Melman were false. Claimant has therefore suffered losses as a result of Melman's failure to disclose the risks associated with Hyperion. Claimant further alleges that Prudential failed to provide him with a copy of his arbitration agreement, as a result he filed in the wrong forum, causing him to lose his filing fee.

On or about September 19, 1988, Claimant purchased 800 units of VMS Mortgage Investment Fund ("VMS") based upon the unsolicited advise of Prudential. Claimant alleges that he has been damaged as a result of being coerced into remaining in a class action involving VMS, because of his employment with Prudential, thereby giving up his right to pursue full recovery of his losses against Prudential.

Respondent alleges Claimant had full, complete and contemporaneous knowledge of the transactions at issue; that any losses in Claimant's account were caused by market conditions that were beyond the control of Respondent; that Respondent did not misrepresent Claimant regarding mutual fund investments; that Respondent gave copies of brokerage contracts to Claimant which included the agreement to arbitrate when Claimant opened accounts at Respondent brokerage house; that Claimant had participated in a class action lawsuit regarding VMS which subsequently barred arbitration of this issue.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$10,000.00 and punitive damages.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. At the hearing, the Claimant dismissed with prejudice all claims against Melman.
2. Claimant represented to the Arbitrator that he would join in a request by Respondent, PSI to the NASD that this complaint be totally removed from Melman's CRD record.
3. At the hearing, Claimant dismissed with prejudice Claim II which dealt with the sale of units or shares in VMS.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, PSI is found liable and shall pay to the Claimant the amount of \$380.00.
2. Claimant's request for punitive damages is denied.

**OTHER COSTS**

Other than the Forum Fees detailed below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.


**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$400.00 (2 sessions x \$200.00 per session).
2. Respondent, PSI is hereby assessed forum fees in the amount of \$400.00 of which \$200.00 shall be paid directly to the Claimant as a refund of his hearing session deposit and \$200.00 of which shall be paid to the NASD.
3. Respondent, PSI shall pay directly to the Claimant the \$75.00 non-refundable filing fee previously paid by the Claimant.
4. The NASD shall retain the \$75.00 nonrefundable filing fee and the \$200.00 hearing session deposit previously paid by Claimant.

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

Concurring Arbitrator's Signature

Name



Craig Edward Stein, Esq.

Public/Chairman

Date of Decision: April 22, 1996