

## **NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Donald James Fuselier  
Josette M. Fuselier

and

NASD Case Number: 95-02181

**Name of Respondents**

Prudential Securities, Inc.  
Jan Holland Townes

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### **REPRESENTATION OF PARTIES**

Claimants Donald James Fuselier and Josette M. Fuselier were represented by Jeffrey Ackermann, Esq. of Durio, McGoffin & Stagg located in Lafayette, Louisiana.

Respondents Prudential Securities, Inc. and Jan Holland Townes were represented by Stratton Bull, Esq. of Phelps Dunbar, L.L.P. located in Jackson, Mississippi.

### **CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimants Donald James Fuselier and Josette M. Fuselier on or about May 5, 1995.

Claimants' Joint Submission Agreement was signed on April 24, 1995.

The Statement of Answer and Counterclaim was filed with the NASD by Respondents Prudential Securities, Inc. and Jan Holland Townes on or about July 25, 1995.

Respondent Jan Holland Townes' Submission Agreement was signed on July 24, 1995.

The NASD has no record that Respondent Prudential Securities, Inc. signed a Submission Agreement.

### **HEARING INFORMATION**

The telephonic pre-hearing conferences were held on January 12, 1996 for (1) session and May 16, 1996 for one (1) session.

The hearing was held on May 20, 1996 for two (2) sessions, May 21, 1996 for two (2) sessions, and May 22, 1996 for two (2) sessions. The hearing location was New Orleans, Louisiana.

### **CASE SUMMARY**

Claimants Donald James Fuselier and Josette M. Fuselier ("Claimants") alleged that they opened securities accounts at Respondent Prudential Securities, Inc. ("PSI") under the supervision of Respondent Jan Holland Townes ("Townes"). Claimants asserted that Donald Fuselier advised Townes to make a distinction between the account that would be for Donald Fuselier versus the account in the name of and for Josette Fuselier. Claimants contended that Josette Fuselier's investment objective was security of principal, safety and income. Claimants maintained that Donald Fuselier's account was initially recognized to be suitable for more speculative investing. Claimants alleged, at a certain point, Donald Fuselier started to advise Townes that he was no longer capable of tolerating the risk suggested by the losses in the account. Claimants asserted that Townes repeatedly assured Donald Fuselier to stay in the account rather than to sell any of the positions in his account. Claimants contended that Townes excessively traded in both accounts suggesting the possibility that the account was churned. Claimants maintained that the losses suffered in both accounts are the results of unsuitable investments and investing decisions by Townes and was exacerbated by the excessive and inordinate amount of trading done by Townes.

Respondents Prudential Securities, Inc. and Jan Holland Townes denied all liability to Claimants in the Statement of Answer. Respondents alleged that Donald Fuselier made all investment decisions for both accounts and did not distinguish investment strategies between the accounts. Respondents asserted that Donald Fuselier had significant investment experience. Respondents contended that Donald Fuselier's investment strategy was to buy large blocks of NASDAQ stocks and take short term profits. Respondents denied that Donald Fuselier told Townes that his investment strategy has changed.

### **RELIEF REQUESTED**

Claimant Donald James Fuselier requested damages in the amount of \$223,612.25. Claimant Josette M. Fuselier requested damages in the amount of \$177,647.90. Claimants also requested additional losses including actual losses, lost anticipated profits, excessive commissions, interest, costs of arbitration, reasonable attorneys' fees and punitive damages.

Respondents Prudential Securities, Inc. and Jan Holland Townes requested that the Statement of Claim be dismissed, an award of attorney's fees and an amount for any additional damages suffered as a result of the filing of this complaint by Donald Fuselier.

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

Respondent Prudential Securities, Inc. 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 and appeared at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed in its entirety with prejudice;
2. Other than forum fees which are specified below, the parties shall each bear their own respective costs and attorney's fees; and
3. Any relief not specifically enumerated is hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 per pre-hearing session, if any. There were six (6) hearing sessions x \$1,000 = \$6,000 in forum fees. There were two (2) pre-hearing sessions x \$300 = \$600 in forum fees. Total forum fees = \$6,600. Pursuant to §43(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.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250 previously deposited with the NASD by the Claimants. The NASD shall refund the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimants. The NASD shall retain the \$1,000 postponement deposit previously deposited with the NASD by the Claimants.

Respondent Prudential Securities, Inc. is liable for, and shall pay forum fees in the amount of \$6,600. Respondent Prudential Securities, Inc. is liable for, and shall pay the Section 45 Member Surcharge in the amount of \$350.

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

Concurring Arbitrators' Signatures

\s\ Martha Failing, Esq.

Martha Failing, Esq.  
Chairperson  
Public Arbitrator

June 16, 1996

Dated:

\s\ Herman Brasseaux

Herman Brasseaux  
Panelist  
Public Arbitrator

June 18, 1996

Dated:

\s\ James Mervin Benson, Jr., Esq.

James Mervin Benson, Jr., Esq.  
Panelist  
Industry Arbitrator

July 10, 1996

Dated:

For NASD use only:

Date award served on the parties: July 19, 1996