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NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Names of Claimants

Moses & Chava Kuropatwa
Motel & Lea Sirkis

vs.

Case No.
95-03090

Names of Respondents

*Prudential Securities, Inc.
Gilford Securities, Inc.
Jeffrey G. Nunez

REPRESENTATION

For Claimants Moses & Chava Kuropatwa ("the Kuropatwas") and Motel & Lea Sirkis ("the Sirkises"), hereinafter collectively referred to as "Claimants," appeared Solomon J. Jaskiel, Esq., a private practitioner located in New York, New York.

For Respondent Prudential Securities, Inc. ("Prudential") appeared Art Baumgartner, Esq., in-house counsel for Respondent Prudential located in New York, New York.

For Respondent Gilford Securities, Inc. ("Gilford") appeared Joel Levinson, Esq., in-house counsel for Respondent Gilford located in New York, New York.

For Respondent Jeffrey G. Nunez ("Nunez") appeared Michael Kalmus, Esq., of the law firm Kalmus & Martuscello located in New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on June 23, 1995. Claimants filed an Amended Statement of Claim on April 26, 1996. Claimants' Submission Agreement was signed on June 23, 1995.

Respondent Prudential's Statement of Answer was filed on August 17, 1995. Respondent Prudential's Submission Agreement was signed on August 18, 1995.

Respondents Gilford and Nunez filed a Joint Statement of Answer on September 6, 1995. Respondent Gilford's Submission Agreement was signed on August 6, 1995. Respondent Nunez's Submission Agreement was signed on August 6, 1995.

HEARING INFORMATION

Pre-Hearing Conferences:	June 4, 1996	-	Two Sessions
	July 15, 1996	-	One Session
	August 2, 1996	-	One Session
	August 19, 1996	-	One Session
	September 24, 1996	-	One Session
	February 14, 1997	-	One Session
Hearing Dates/Sessions:	March 4, 1997	-	Two Sessions
	March 5, 1997	-	Two Sessions
	March 6, 1997	-	Two Sessions
	April 14, 1997	-	Two Sessions
	April 15, 1997	-	Two Sessions
	June 23, 1997	-	Two Sessions
	June 24, 1997	-	Two Sessions
	July 2, 1997	-	Two Sessions
	July 3, 1997	-	Two Sessions
	September 8, 1997	-	Two Sessions
	September 9, 1997	-	Two Sessions
	October 9, 1997	-	Two Sessions
	November 20, 1997	-	Two Sessions
	November 21, 1997	-	Two Sessions
	November 26, 1997	-	Two Sessions

The pre-hearing conferences were held telephonically, with the exception of the sessions conducted on June 4 and August 2, 1996, which were held at the offices of NASD Regulation, Inc. located in New York, New York. The hearings were also conducted at the offices of NASD Regulation, Inc.

CASE SUMMARY

Claimants, who are in their mid-70's and Holocaust survivors, stated that they were conservative investors who, in 1993, maintained a substantial portfolio limited to tax-free municipal bonds in two separate accounts at Respondent Prudential. Claimants alleged that in late October 1993, Respondent Nunez, then their registered representative at Respondent Prudential, purchased, on margin, 10,000 shares of DWG stock in each of their accounts, without their knowledge, consent or approval. Claimants also alleged that they immediately complained to Nunez, who said that he would sell the shares. In early December 1993, Claimants stated that they again complained to Respondent Nunez's branch manager and to an attorney in Respondent Prudential's legal department. Claimants also stated that by December 1, 1993, the collective value of the DWG (then renamed TRIARC) shares which Respondent Nunez had purchased had dropped approximately \$100,00.00.

Claimants stated that on December 3, 1993, Respondent Prudential discharged Respondent Nunez, allegedly because he had violated firm policy, and that on December 14, 1993, Respondent Gilford hired Respondent Nunez. Claimants claimed that on December 15, 1993, Respondent Nunez appeared at Claimants' office, and convinced them to transfer their accounts to Respondent Gilford. Claimants also claimed that Respondent Nunez promised that, once transferred, he would sell the shares and make up the losses. Claimants further claimed that Respondent Prudential never followed up on Claimants' complaints.

Claimants allege that unbeknownst to them, shortly after Respondent Nunez's discharge, two other customers asserted complaints against Respondent Nunez alleging unauthorized trading in DWG securities in early November 1993.

Claimants asserted that for the first six months of 1994, Respondent Nunez failed to sell the TRIARC shares in Claimants' accounts, despite their repeated requests. Claimants also asserted that during that period, the collective value of the shares dropped an additional approximate \$200,000.00, and that Respondent Nunez finally sold the stocks in July 1994 at a total collective loss of \$300,000.00. Claimants further asserted that with margin interest, the total loss stood at \$464,470.29 as of October 1, 1997.

Claimants contended that Respondent Prudential failed to properly supervise Respondent Nunez, failed to properly investigate their complaints, failed to report the complaint made by the Sirkises to the NASD on an amended U-5, failed to properly report to the NASD on an amended U-5 that Respondent Nunez had attempted to pay off a loss with personal checks, and negligently informed Respondent Gilford that the third complaint was withdrawn. Claimants also contended that Respondent Prudential is liable for the loss on the grounds of respondeat superior, failure to supervise and negligent misrepresentation.

Claimants alleged that, at the time Respondent Gilford hired Respondent Nunez, he was unfit to be a registered representative, that Respondent Gilford failed to properly investigate Respondent Nunez's background, that Respondent Gilford knew or should have known that Respondent Nunez was unfit to be a broker, and that Respondent Gilford hired and retained him anyway. Claimants also alleged that Respondent Gilford is liable for the loss on the grounds of respondeat superior and negligent hiring and retention.

Respondent Prudential stated that Claimants were sent monthly statements and confirmations for all of the activities in their accounts. Respondent Prudential maintained that Claimants repeatedly violated the terms of their written agreement by not objecting to the transactions in writing, and by not informing the Branch Manager of the alleged unauthorized trade.

Respondent Prudential contended that Claimants are intelligent and experienced businessmen who understood that they could have resolved their problem with Respondent Prudential, but instead chose to follow Respondent Nunez to Respondent Gilford. Respondent Prudential also contended that once Claimants' accounts were transferred to Respondent Gilford, Respondent Prudential lost all control over the accounts.

Respondent Prudential asserted that Claimants failed to provide a reasonable explanation for their delay in reporting the DWG trades. Respondent Prudential suggested that perhaps they failed to report the trades because they wanted to keep the shares, since several of Claimants' relatives also owned shares of DWG and were making money in October 1993.

Respondent Prudential asserted that Claimants failed to offer a reasonable explanation why they continued to do business with Respondent Nunez after he was fired from Respondent Prudential. Respondent Prudential further asserted that these actions clearly established that Claimants ratified the DWG trades when they transferred their account to Respondent Gilford. Respondent Prudential maintained that it's decision to conclude their investigation of Claimants' complaint was reasonable because of Claimants' actions of December 1993 where they followed Respondent Nunez to another firm; Respondent Prudential assumed that the matter had been resolved.

Respondent Prudential maintained that when Respondent Nunez visited Claimants at their offices, he was not acting as a Prudential employee, and, therefore, this action did not fall under the doctrine of respondeat superior.

Respondent Gilford contended that the Claimants never informed Respondent Gilford that the DWG position was unauthorized, and that the firm never knew that the Claimants wanted to sell the position. Respondent Gilford also contended that the Claimants never informed Respondent Gilford of this arrangement in order to allow Respondent Nunez to sell the stock and make up the losses on his own, without Respondent Gilford's knowledge.

Respondent Gilford further contended that the Claimants are intelligent and experienced businessmen who understood they had a right to inform Gilford's management of their problem, but knowingly chose not to do so, thus relying upon Respondent Nunez to remedy the situation.

Respondent Gilford maintained that Claimants assumed the risk that Respondent Nunez would continue to fail to fulfill his promise to sell the stock, and by not informing management at Respondent Gilford they would deprive the firm of the opportunity to remedy the situation or mitigate their losses. Respondent Gilford also maintained that in view of the fact that Claimants had followed Respondent Nunez at three firms prior to Gilford, they hired and retained Respondent Nunez as much as did Gilford. Respondent further maintained that Respondent Nunez's complaint record at the time he was hired by Respondent Gilford did not warrant a denial to hire, and that the complaints that came to light after he was hired did not warrant his termination, since Respondent Gilford was informed by Respondent Prudential that two out of the three complaints were no longer being pursued.

Respondent Gilford asserted that information supplied by Respondent Prudential, in conjunction with the Claimants' failure to inform management at Respondent Gilford concerning their alleged problem, plus the transfer of their entire accounts with Respondent Nunez to Respondent Gilford including the stock in question, constituted ratification and a failure to mitigate their damages on the part of the Claimants.

Respondent Nunez maintained that the DWG transactions effected at Respondent Prudential were approved by Claimants. Respondent Nunez denied that while he was employed by Respondent Prudential, he told Claimants that he would indemnify their losses. Respondent Nunez also maintained that the reason that the Claimants held the stock is because they were hoping its price would rebound.

RELIEF REQUESTED

Claimants requested:

1. Monetary damages against Respondents jointly and severally in the amount of \$464,470.29;
2. Attorneys' and expert fees in the amount of \$97,041.74;
3. Punitive damages in the amount of \$97,041.74;
4. A recommendation and referral to the NASD that Respondent Nunez be banned as a registered representative; and

5. Any other relief that the arbitrators deemed appropriate.

Respondent Prudential requested that all claims brought by Claimants be dismissed in their entirety.

Respondent Gilford requested that all claims brought by Claimants be dismissed in their entirety.

Respondent Nunez requested that Claimants' Statement of Claim be dismissed and that Claimants be required to pay all filing fees, forum fees, and reasonable expenses, including lodging, travel costs, expert witness fees, attorneys' fees and costs which are incurred in connection with the defense of these 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 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:

1. Respondents Prudential and Nunez be and hereby are jointly and severally liable and shall pay to Claimants Moses & Chava Kuropatwa the sum of \$234,688.50 in compensatory damages, plus interest as provided in paragraph five.
2. Respondents Prudential and Nunez be and hereby are jointly and severally liable and shall pay to Claimants Motel & Lea Sirkis the sum of \$229,781.79 in compensatory damages, plus interest as provided in paragraph five.
3. Respondent Nunez be and hereby is liable and shall pay to Claimants Moses & Chava Kuropatwa the sum of \$50,000.00 in compensatory damages, plus interest as provided in paragraph five.
4. Respondent Nunez be and hereby is liable and shall pay to Claimants Motel & Lea Sirkis the sum of \$50,000.00 in compensatory damages, plus interest as provided in paragraph five.
5. All awards shall bear interest at the rate of 9% from December 4, 1997.
6. Claimants' requests for punitive damages are hereby denied.
7. Each party shall bear its own costs and expenses, including attorneys' fees.
8. All other requests for relief are hereby denied.

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FORUM FEES

Pursuant to Rule 10332(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that NASD Regulation shall retain the \$250.00 non-refundable filing fee previously submitted by Claimants, and have assessed the following forum fees:

7 Pre-hearing conferences x \$300.00	=	\$ 2,100.00
30 Hearing Sessions x \$600.00	=	\$18,000.00
Total Forum Fees	=	\$20,100.00

The arbitrators have determined that Claimants, jointly and severally, shall pay 25% of the hearing session total forum fees assessed; Respondent Prudential shall pay 25% of the hearing session fees assessed; Respondent Gilford shall pay 25% of the total hearing session fees assessed; and, Respondent Nunez shall pay 25% of the hearing session fees assessed.

1. Claimants be and hereby are liable and shall pay the sum of \$4,500.00, representing twenty-five percent of the hearing session assessed. Claimants previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, Claimants shall pay the balance of \$3,900.00.
2. Respondent Prudential be and hereby is liable and shall pay the sum of \$4,500.00, representing twenty-five percent of the hearing session fees assessed.
3. Respondent Gilford be and hereby is liable and shall pay the sum of \$4,500.00, representing twenty-five percent of the hearing session fees assessed.
4. Respondent Nunez be and hereby is liable and shall pay the sum of \$4,500.00 representing twenty-five percent of the hearing session fees assessed.
5. Respondent Prudential be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Respondent Prudential has submitted the sum of \$350.00, and, therefore, does not owe the Member Surcharge.
6. Respondent Gilford be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Respondent Gilford has submitted the sum of \$350.00, and, therefore, does not owe the Member Surcharge.
7. All fees relating to pre-hearing conferences \$2,100.00 are assessed against Respondents Prudential and Gilford, equally.

Fees are payable to NASD Regulation, Inc.

CONCURRING ARBITRATORS' SIGNATURES


I, Jeffrey S. Eisenberg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Jeffrey S. Eisenberg, Esq.
Public Chairperson

I, Neil J. Carey, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Neil J. Carey
Public Panelist

I, Richard S. Peskin, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Richard S. Peskin, Esq.
Industry Panelist

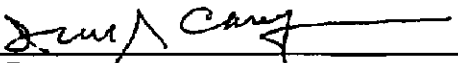
Date of Decision: January 23, 1998

CONCURRING ARBITRATORS' SIGNATURES

I, Jeffrey S. Eisenberg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Jeffrey S. Eisenberg, Esq.
Public Chairperson

I, Neil J. Carey, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Neil J. Carey
Public Panelist

I, Richard S. Peskin, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

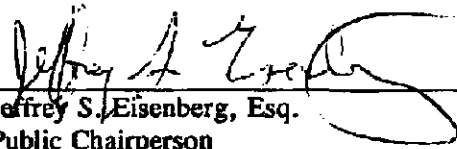
Richard S. Peskin, Esq.
Industry Panelist

Date of Decision: January 23, 1998

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CONCURRING ARBITRATORS' SIGNATURES

I, Jeffrey S. Eisenberg, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.



Jeffrey S. Eisenberg, Esq.
Public Chairperson

I, Neil J. Carey, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Neil J. Carey
Public Panelist

I, Richard S. Peskin, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard S. Peskin, Esq.
Industry Panelist

Date of Decision: January 23, 1998