

## **AWARD**

*NASD Regulation, Inc. Office of Dispute Resolution*

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In the Matter of the Arbitration Between

Leonard E. Weller, and Barbara P. Weller

Claimants.

v.

No. 95-03613

Prudential Securities, Inc., and  
Scott Kurth,

Respondents.

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## **REPRESENTATION OF PARTIES**

Claimants Leonard E. Weller and Barbara P. Weller were both represented by Alfred J. Gemrich, Esquire of Gemrich, Moser, Bowser & Lohrmann located in Kalamazoo, Michigan.

Respondent Prudential Securities, Inc. was represented by Patrick Gaffney, Esquire of Prudential Securities, Inc. located in New York, New York.

Respondent Scott Kurth was represented by Dennis K. Egan, Esquire of Butzel Long located in Detroit, Michigan.

## **CASE INFORMATION**

Claimants Leonard E. Weller and Barbara P. Weller's Statement of Claim was filed on or about July 27, 1995.

Claimants Leonard E. Weller and Barbara P. Weller's Submission Agreement was signed on July 21, 1995.

Respondent Prudential Securities, Inc.'s Statement of Answer was filed on or about October 6, 1995.

Respondent Prudential Securities, Inc. failed to submit a properly executed Submission Agreement.

Respondent Scott Kurth's Statement of Answer was filed on or about October 4, 1995.

Respondent Scott Kurth's Submission Agreement was signed on October 3, 1995.

### **HEARING INFORMATION**

A pre-hearing conference was held on April 24, 1996 for one (1) session.

The hearing was held on:

- May 14, 1996 for two (2) sessions;
- May 15, 1996 for two (2) sessions;
- May 16, 1996 for two (2) sessions;
- August 13, 1996 for three (3) sessions;
- August 14, 1996 for two (2) sessions;
- August 15, 1996 for three (3) sessions; and
- August 16, 1996 for one (1) session.

The hearing was held in Detroit, Michigan, and Grand Rapids, Michigan.

### **CASE SUMMARY**

Claimants Leonard E. Weller and Barbara P. Weller (hereinafter collectively referred to as "Claimants") alleged that their broker, Respondent Scott Kurth ("Kurth"), through his employer, Respondent Prudential Securities, Inc. ("PSI") (hereinafter collectively referred to as "Respondents"), entered into a pattern of unauthorized trading, excessive trading, churning, margin trading, selection of unsuitable securities, failure to select, pursue and abide by appropriate investment objectives and fraudulent conduct in the handling of Claimants' account. Claimants further alleged that Respondents took advantage of Claimants' poor financial condition, poor health and lack of investment sophistication. Claimants asserted the following legal claims against Respondents, including: (1) misrepresentation; (2) fraud, negligence and misconduct; (3) violations of federal securities laws, the common law, NASD Rules, and NYSE Rules; (4) violations of Michigan Uniform Securities Law; (5) breach of contract; (6) breach of duty, and (8) violations of the RICO Act. Claimants contended that as a result of these alleged wrongful actions by Respondents, they have suffered injuries and damages in the amount of \$414,844 from losses and fees to their account.

Respondent Prudential Securities, Inc. denied the allegations set forth in the Statement of Claim. Respondent PSI stated that Claimants were not as unsophisticated at investing as they claimed to be.

Respondent PSI contended that Claimants were risk takers who refused advice to slow down on trading. Furthermore, Respondent PSI maintained that Claimants' loss to their account was only approximately \$39,731.94. Respondent PSI asserted the following affirmative defenses, including that: (1) all claims were barred by statutes of limitation; (2) all claims were barred since Claimants ratified all of the transactions of which they now complain; and (3) all claims were barred by the doctrines of waiver and estoppel.

Respondent Scott Kurth denied the allegations set forth in the Statement of Claim. Respondent Scott Kurth stated that Claimants were knowledgeable investors and that the short-term losses in Claimants' account was due to their own decision to trade. Respondent Scott Kurth further stated that Claimants invoked their own trading strategy and they either initiated or approved each and every transaction.

### **RELIEF REQUESTED**

Claimants Leonard E. Weller and Barbara P. Weller requested: an award in the amount of \$414,844 for actual damages; an award in the amount of \$777,559 for punitive damages; an award in the amount of \$777,559 for RICO damages; as well as an award of interest, costs, and attorney fees.

Respondent Prudential Securities, Inc. requested that the Statement of Claim be denied and dismissed in its entirety and that costs be assessed against Claimants Leonard E. Weller and Barbara P. Weller.

Respondent Scott Kurth denied the claims asserted against him in their entirety and requested that Claimants Leonard E. Weller and Barbara P. Weller be awarded nothing on their claims.

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

Respondent Prudential Securities, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 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.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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) That the Statement of Claim is dismissed in its entirety with prejudice;
- (2) That Respondent Prudential Securities, Inc. shall pay Claimants Leonard E. Weller and Barbara P. Weller the sum of Seven Hundred and Fifty Dollars and No Cents (\$750.00) as reimbursement of the hearing session deposit; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing session x \$300 = \$300, and there were fifteen (15) hearing sessions x \$750 = \$11,250 in forum fees. Total forum fees are \$300 + \$11,250 = \$11,550. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants Leonard E. Weller and Barbara P. Weller.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, Respondent Prudential Securities, Inc. is liable for, and shall pay forum fees in the amount of \$10,800.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Respondent Prudential Securities, Inc. is also liable for, and shall pay the member surcharge fee in the amount of \$350.

NASD Regulation, Inc. Office of Dispute Resolution incurred expenses in the amount of \$494.68 for long distance charges associated with Claimants' expert witness appearing at the hearing via speaker phone. Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, Respondent Prudential Securities, Inc. is liable for, and shall pay to NASD Regulation, Inc. the sum of \$494.68 as reimbursement for its expenses.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

*Concurring Arbitrators' Signatures*

\s\ George P. Doom  
George P. Doom  
Chairperson  
Public Arbitrator

August 27, 1996  
Dated:

\s\ Barry Goldman  
Barry Goldman, Esquire  
Panelist  
Public Arbitrator

August 28, 1996  
Dated:

\s\ Timothy D. Wasson  
Timothy D. Wasson  
Panelist  
Industry Arbitrator

August 27, 1996  
Dated:

For NASD use only:

Date award served on the parties: September 4, 1996