

6/96
N.A.S.D. AWARD

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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Andrew Welch

95-03902

Name of Respondents

Prudential Securities, Inc.
Joseph Zampetti

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Securities Dealers, Inc.

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REPRESENTATION

For Claimant Andrew Welch: Mitchell Colbert, Esq., sole practioner, Morristown, New Jersey

For Respondent Prudential Securities Inc.: Arthur G. Baumgartner, Esq., of Prudential Securities Inc., New York, New York.

Respondent Joseph Zampetti appeared pro se.

CASE INFORMATION

Statement of Claim filed: July 31, 1995.

Claimant's Submission Agreement signed on: July 31, 1995.

Statement of Answer filed by Respondent, Prudential securities, Inc., on: October 4, 1995.

Respondent Prudential Securities, Inc.'s Submission Agreement signed on: October 4, 1995.

Respondent Joseph Zampetti's Submission Agreement signed on: May 3, 1996.

Respondent, Joseph Zampetti did not file a Statement of Answer as required by Section 25(b)(1) of the NASD Code of Arbitration Procedure.

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HEARING INFORMATION

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|-------------------------|--------------|--------------|
| Hearing Dates/Sessions: | May 2, 1996 | Two Sessions |
| | May 3, 1996 | Two Sessions |
| | May 13, 1996 | Two Sessions |

CASE SUMMARY

Claimant alleged that as a result of the actions of Joseph Zampetti ("Zampetti") and Prudential Securities, Inc., ("Prudential") he lost almost all of his life savings, which Claimant told Zampetti amounted to a little more than \$20,000.00. Claimant alleged that he told Zampetti that he did not want to risk his money in any way and that he only wanted to invest it in a safe, secure stock. In addition, Claimant alleged that prior to the investments recommended by Zampetti, he had never purchased any stocks.

Claimant alleged that Zampetti discouraged him from purchasing \$10,000.00 of Amtech stock, which had been recommended to Claimant by a friend, Mr. Ray Spellman, as Zampetti said that Sulcus Computer Corporation ("Sulcus") was a much better investment. Claimant further alleged that Zampetti assured him that Sulcus was a safe stock and that he would receive a minimum 20% return within three months if he agreed to buy 2,000 shares at a cost of \$18,320.31. In addition, Claimant alleged that he never received a prospectus, nor was he warned by Zampetti of any risk in Sulcus.

Claimant alleged that at the end of three months the stock had decreased slightly, so he called Zampetti who told Claimant that he should hold the stock, which he did, and over the next three months the stock increased to \$11 per share. Claimant alleged he called Zampetti and told him that he thought he should sell the stock; however, Zampetti told him not to sell because the stock, without any doubt, would go to \$14 per share. Claimant alleged that based on Zampetti's representations he decide to hold the stock.

Claimant alleged that in January 1994, after receiving his quarterly statement for the period October 1, 1993 to December 31, 1993, in which he noticed that the stock had declined to \$7.75 per share, he called Prudential to speak to Zampetti and learned that Zampetti was no longer a registered representative of Prudential. Claimant alleged that he spoke to Mr. Glenn O'Neill ("O'Neill"), Zampetti's replacement, who advised Claimant that Sulcus was a good stock and that Claimant should continue to hold it, which Claimant agreed to do.

Claimant alleged that when he spoke to O'Neill, in late February, O'Neill advised Claimant to buy additional shares of Sulcus, on margin, to lower the average cost per share of his stock, and that O'Neill told Claimant that price of Sulcus would increase, which would enable Claimant to receive the same profit that he had expected. Claimant also alleged that O'Neill stated that since Claimant was buying on margin, he would not have to pay for these additional shares until they were sold.

Claimant alleged that he agreed to buy 800 additional shares of Sulcus at \$6 7/8. Claimant further alleged that within a few weeks of the purchase he began receiving notices from Prudential advising him that he owed money, but O'Neill told him not to worry about the

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notices. Claimant further alleged that on April 28, 1994 he made a margin payment of \$1,800, and believed he would not receive further notices from Prudential.

Claimant alleged that in May 1994, he called Prudential and learned that his account had been transferred to Mr. Eric Ruffman ("Ruffman") who told Claimant that Sulcus had dropped in value because of miscalculations made by Sulcus; however, Ruffman advised Claimant to hold the stock since the price of Sulcus would increase. Claimant further alleged that he followed the advice of Ruffman and authorized the purchase of additional shares in order to follow Ruffman's suggested new strategy of "doubling down", which Ruffman explained would allow Claimant to sell all of his shares at a lower sales price than before, while still making the same anticipated profit. Claimant alleged that he sent in a check for \$5,782 in July 1994, for the purchase of these additional shares and to pay off his remaining margin debt.

Claimant alleged that his account was again transferred without his knowledge, in August 1994, to Mr. Tom Lucardi ("Lucardi") and that Lucardi stated that he could not believe that Claimant ever purchased Sulcus, and that the entire investment was inappropriate for Claimant; therefore, Claimant sold all of his stock in Sulcus in February and March 1995 and closed his account with Prudential.

Prudential maintained that Claimant authorized each transaction in his account, he was informed of the risks and potential of the Sulcus stock before each purchase and sale, and that the trading activity was consistent with his investment objectives, experience and financial resources as communicated by Welch when he opened his account at Prudential. Prudential maintained that Claimant received a confirmation for each transaction and received monthly account statements listing the end of the month value of Sulcus.

Prudential maintained that Claimant purchased 600 shares of Sulcus in February 23, 1993, for \$5551.75 and an additional 1,400 shares on February 25, 1993, for **\$12,768.56**. Prudential further maintained that in Claimant's March 1993 monthly account statement, Sulcus was listed at **\$15,250.00**, representing a decline of **\$3,070.31** from the purchase price of the stock and that Claimant could have sold his shares of Sulcus at that time; however, the Claimant elected not to do so.

Prudential maintained that in November 1993, Zampetti left Prudential to work at another brokerage firm, and that Claimant decided not to move his account to Zampetti's new office, so Claimant was assigned a new financial advisor, O'Neill. Respondent maintained that on December 31, 1993 the value of the Sulcus stock was **\$2,820.31**, however, on February 25, 1994 Claimant decided to purchase an additional 800 shares of Sulcus stock at $6 \frac{7}{8}$ for **\$5,717.53**.

Prudential maintained that Claimant sold 175 shares of Sulcus on April 20, 1994 for \$520.94, sold an additional 200 shares on April 22, 1994 for \$614.23 and sold 250 shares on April 28, 1994 for \$732.71. However, Prudential maintained that on May 24, 1994 Claimant purchased 500 shares of Sulcus for **\$2,098.25**. Prudential further maintained that when Claimant purchased the additional 500 stocks on May 24, 1994, he was aware that his unrealized loss in Sulcus was **\$15,171.77** and that Claimant's April 1994 monthly account statement showed an end of the month value of **\$7,730.90**. In addition, Prudential maintained that Claimant elected to purchase

400 additional shares of Sulcus on June 6, 1994 for \$1,915.02.

Respondent maintained that Claimant authorized every transaction in the account and could have sold his holdings in Sulcus at anytime; however, Claimant elected to hold the stock and now seeks to hold Respondents liable for his deliberate and intentional investment decisions.

RELIEF REQUESTED

Claimant requested \$20,213.91 together with interest, costs, reasonable attorney's fees, punitive damages and such other relief as the panel may consider appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety.

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 originals remain on the 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. All claims are hereby dismissed in their entirety.
2. Respondent, Prudential Securities, Inc., shall pay to Claimant the sum of \$400.00 representing reimbursement of the hearing session deposit paid by the Claimant.
3. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Hearing Session Fees: \$2,400.00 (6 sessions x \$400)

Respondent Prudential Securities, Inc. is assessed \$2,400.00 representing the total forum fees due, less \$400.00 paid to Claimant, leaving \$2,000.00 due. Respondent, Prudential Securities, Inc., is liable and shall pay to the NASD the sum of \$2,000.00.

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ARBITRATORS' SIGNATURES

Dorothy Gray, Esq.
Public Chairperson

Donald Ferguson
Donald Ferguson, Esq.
Public Arbitrator

Carolyn Condo
Industry Arbitrator

Date of Decision: June 26, 1996

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I, Dorothy Gray, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Dorothy Gray, Esq.

I, Donald Ferguson, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Donald Ferguson
Donald Ferguson, Esq.

I, Carolyn Condo, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.


Carolyn Condo

ARBITRATORS' SIGNATURES

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Dorothy Gray, Esq.
Public Chairperson

Donald Ferguson, Esq.
Public Arbitrator



Carolyn Condo
Industry Arbitrator

Date of Decision: June 26, 1996

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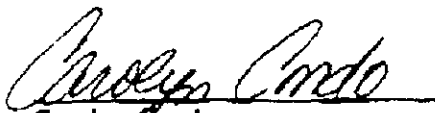
I, Dorothy Gray, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure law & Rules, that this is my decision in the above captioned matter.

Dorothy Gray, Esq.

I, Donald Ferguson, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Donald Ferguson, Esq.

I, Carolyn Condo, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.


Carolyn Condo