

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Louis Green

Claimant,

v.

No. 95-04190

Prudential Securities, Inc.

Respondent.

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## **REPRESENTATION OF PARTIES**

Claimant Louis Green ("Claimant") was represented by James C. Steffl, Esq. of Lebow & Tobin located in Farmington Hills, Michigan.

Respondent Prudential Securities, Inc. ("PSI") was represented by Patrick Gaffney, Esq. of Prudential Securities, Inc. located in New York, New York.

Respondents Hamilton Investments, Inc. ("Hamilton Investments") and Scott Smith ("Smith") were dismissed from this matter with prejudice pursuant to a Stipulated Agreement between Claimant and Respondents Hamilton Investments and Smith.

## **CASE INFORMATION**

The Statement of Claim was filed on or about August 31, 1995. Claimant's Submission Agreement was signed on August 10, 1995.

Respondent PSI's Statement of Answer was filed on or about November 20, 1995. Respondent PSI's Submission Agreement was signed on December 4, 1995 by Stuart A. Abrams, Senior Vice President of Prudential Securities, Inc.

## **HEARING INFORMATION**

The Hearing was held on January 23, 1997 for two (2) sessions in Southfield, Michigan.

### **CASE SUMMARY**

Claimant alleged that he maintained a securities account at Respondent PSI and that Respondent Smith was his broker. Claimant maintained that, after Respondent Smith moved his employment to Hamilton Investments, Claimant opened a securities account at Hamilton Investments and that Smith remained his broker.

Claimant contended that, prior to investing with Smith, Claimant's investments were conservative. Claimant asserted that he advised Respondent Smith that Claimant was looking for low-risk CD-type investments for his "nest egg." Claimant stated that, apart from CDs, he knew nothing about investing. Claimant maintained that Respondent Smith disregarded these directions and invested Claimant's money in high-risk positions. Claimant alleged that, while Claimant's account was at PSI, the course of trading was unsuitable, turnover was unacceptable, and large losses occurred with both stocks and options. Claimant contended that, at Hamilton Investments, the trends toward increased risk accelerated rapidly and purchasing on margin was initiated, with margin balances into the five figures. Claimant alleged that Respondents' conduct violated federal and state securities law and common law. Claimant asserted various claims, including: breach of fiduciary duty; breach of contract; emotional and physical trauma; misrepresentation and deceptive devices; negligence; securities law violations; conversion; and respondeat superior.

Respondent PSI denied all liability to Claimant in the Statement of Answer. Respondent PSI alleged that the Claimant's trading was consistent with his indicated investments objectives of speculation, income and investment hedge. Respondent PSI asserted the following affirmative defenses, including: that the Statement of Claim fails to state a claim upon which relief can be granted; that all claims are barred by applicable statutes of limitation; that the Claimant ratified all transactions; that all claims are barred by the doctrines of waiver, estoppel, and laches.

### **RELIEF REQUESTED**

Claimant requested an award including: reimbursement of his trading losses; a recovery of all income which should have been earned; the disgorgement of all fees, commissions, and profits earned by Respondents; attorney fees; interest; and exemplary and punitive damages.

Respondent PSI requested that the Claimant's claim be denied in its entirety and that costs be assessed against Claimant.

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

The Joint Motion to Postpone was granted.

Respondent PSI's Motion to Preclude was denied.

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 denied in its entirety with prejudice; and
- (2) 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 \$500 per hearing session and \$300 for each pre-hearing conference, if any.

There were two (2) hearing sessions x \$500 = \$1,000 in forum fees. Total forum fees are \$1,000. Pursuant to 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Pursuant to 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the postponement fee in the amount of \$250 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondents.

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Pursuant to 10332(c) of the Code, Claimant Louis Green is liable for, and shall pay forum fees in the amount of \$500 and postponement fees in the amount of \$250.

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

Concurring Arbitrators' Signatures

\s\ Norman Bristol, Esq.  
Norman Bristol, Esq.  
Chairperson  
Public Arbitrator

(undated)  
Dated:

\s\ Frederick F. Fordon  
Frederick F. Fordon  
Panelist  
Public Arbitrator

February 4, 1997  
Dated:

\s\ Bruce F. Coleman  
Bruce F. Coleman  
Panelist  
Industry Arbitrator

February 5, 1997  
Dated:

For NASD Regulation use only:  
Date award served on the parties: February 11, 1997