

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Adam Segan

95-04487

**Name of Respondent**

Prudential Securities Inc.  
David Stack  
David Miller

**REPRESENTATION**

For claimant Adam Segan ("claimant") appeared Darren Lampert, Esq. of the law firm of Lampert & Lampert located in New York, New York.

For respondents Prudential Securities Inc. ("Prudential"), David Stack ("Stack") and David Miller ("Miller") appeared Christopher Freeze, Esq., Assistant General Counsel of Prudential Securities Inc.

**CASE INFORMATION**

Statement of Claim was filed on September 18, 1995. Claimant's Submission Agreement was signed on September 5, 1995.

Joint Statement of Answer was filed by Prudential, Stack and Miller on December 1, 1995. Prudential's Submission Agreement was signed on September 19, 1996. Stack's Submission Agreement was signed on September 18, 1996. Miller's Submission Agreement was signed on September 18, 1996.

**HEARING INFORMATION**

Pre-hearing Conference:	September 13, 1996	-	One Arbitrator
Hearing Sessions/Dates:	September 19, 1996	-	Two Sessions
	September 20, 1996	-	Two Sessions
	October 24, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers located in New York, New York.

### CASE SUMMARY

Claimant alleged that, since November 1993, respondents engaged in a series of fraudulent, reckless and negligent transactions involving various securities and options that they purchased or sold for his account. Claimant further alleged that, as a result of respondents' wrongful conduct, he has suffered damages of more than \$100,000.00.

Claimant alleged that, in or about November 1993, he opened an account at Prudential and that he informed Stack and Miller that he had little experience in the securities market and that any investment he made would have to be conservative because the money he was investing was needed to purchase a home. Claimant contended that, during the period of November 1993 through August 1994, Stack and Miller engaged in a series of in-and-out transactions in his account involving the purchase and sale of highly speculative stocks and options which was intended to generate substantial commissions and trading profits for respondents without regard to his investment objectives.

Claimant alleged that Stack and Miller engaged in excessive trading and churned his account; committed common law fraud by misrepresenting facts and omitting to disclose the risks of investing in speculative securities and options; violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10-b; breached their fiduciary duty to him; acted recklessly and with wanton disregard towards him and his account; and breached the express and implied terms of his Customer Agreement. Claimant further asserted that Prudential failed to properly supervise Stack and Miller with regard to his account and is liable as Stack's and Miller's employer for their negligent and fraudulent acts and omissions.

Respondents denied each and every allegation of misconduct in the Statement of Claim. Respondents maintained that when claimant opened his account he had a stated annual income of at least \$200,000.00, a stated net worth, exclusive of his residence, of at least \$500,000.00 and a stated liquid net worth of at least \$200,000.00 and that claimant's stated investment objective was speculation. Respondents further maintained that, at the time he opened his account, claimant expressed a desire to aggressively trade initial public offerings and options.

Respondents contended that neither Stack nor Miller had discretion over claimant's account and that each investment made in the account was discussed in detail with claimant. Respondents further contended that claimant never complained to Stack or Miller that he was dissatisfied with their handling of his account. Respondents maintained that the branch office manager telephoned claimant on two occasions to discuss the activity in his account and that claimant stated that he was aware of the losses in his account and was aware of the risks associated with his investment strategy.

As affirmative defenses, respondents maintained that claimant authorized, accepted and/or ratified the transactions; that claimant assumed the risk associated with the investments; that claimant failed to mitigate his damages; that any losses sustained by claimant were attributable

to market conditions and to his own investment decisions, not to any action or inaction by respondents; that the claim was barred by the doctrine of laches, waiver, estoppel and ratification; and that claimant has failed to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant requested \$100,000.00 in compensatory damages plus interest from the date the losses were incurred to the date of the hearing plus punitive damages, attorneys' fees, costs and other damages the panel may deem just and fair.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs be awarded in their favor.

### **OTHER ISSUES CONSIDERED AND 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 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 against Prudential, Stack and Miller are hereby dismissed in their entirety.

2. Each party shall bear their own costs, including attorneys' fees.

### **FORUM FEES**

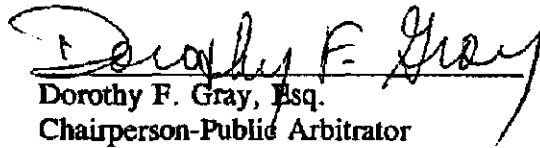
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

Pre-hearing conference	= \$ 300.00
6 hearing sessions x \$750.00	= <u>\$4,500.00</u>
Total forum fees	= <u>\$4,900.00</u>

Claimant be and hereby is liable for the sum of \$4,900.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with the NASD and, therefore, claimant is liable and shall pay \$4,150.00 to the NASD.

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

Arbitrators' Signatures

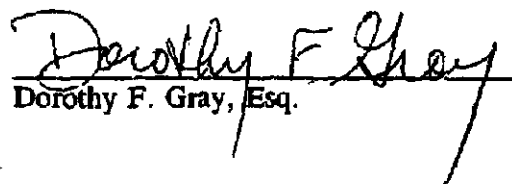
  
Dorothy F. Gray, Esq.  
Chairperson-Public Arbitrator

Phillip C. Landrigan  
Public Arbitrator

William Crowe, Jr., Esq.  
Industry Arbitrator

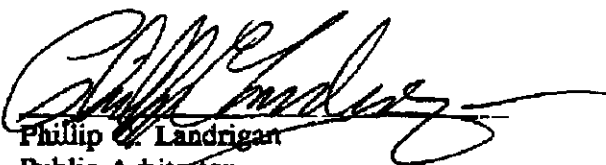
Date of Decision: January 24, 1997

I, Dorothy F. Gray, 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.

  
Dorothy F. Gray, Esq.

Arbitrators' Signatures

Dorothy F. Gray, Esq.  
Chairperson-Public Arbitrator

  
Phillip C. Landrigan  
Public Arbitrator

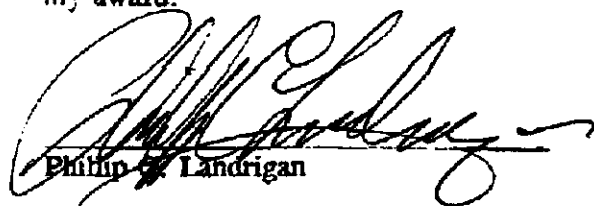
William Crowe, Jr., Esq.  
Industry Arbitrator

William Crowe, Jr., Esq.  
Industry Arbitrator

Date of Decision: January 24, 1997

Date of Decision: January 24, 1997

I, Phillip C. Landrigan, 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.

  
Phillip C. Landrigan

Arbitrators' Signatures

\_\_\_\_\_  
Dorothy F. Gray, Esq.  
Chairperson-Public Arbitrator

\_\_\_\_\_  
Phillip C. Landrigan  
Public Arbitrator

William Crowe, Jr.  
William Crowe, Jr., Esq.  
Industry Arbitrator

Date of Decision: January 24, 1997

William Crowe, Jr.  
William Crowe, Jr., Esq.  
Industry Arbitrator

Date of Decision: January 24, 1997

I, William Crowe, Jr., 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.

William Crowe, Jr.  
William Crowe, Jr., Esq.