

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimants

Ira N. & Lois Weinstein  
Morris & Edith Weinstein  
Edith Weinstein C/F Joshua Z. Weinstein  
Edith Weinstein C/F Michael J. Weinstein  
Edith Weinstein C/F Nola B. Weinstein  
Edith Weinstein C/F Melanie Z. Weinstein

95-04914

Name of Respondents

Prudential Securities Inc  
Robert Klein

**REPRESENTATION**

For Claimants Ira N. Weinstein, Lois Weinstein, Morris Weinstein, Edith Weinstein and Edith Weinstein as custodian for Joshua, Michael, Nola and Melanie Weinstein (collectively referred to as "claimants") appeared Ira Weinstein, Esq.

For Respondents Robert Klein ("Klein") and Prudential Securities Corp. ("Prudential") (collectively referred to as "respondents") appeared Arthur G. Baumgartner, Esq. of Prudential Securities, Inc. located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: October 16, 1995.

Claimants' Submission Agreement signed on: September 9, 1995.

Respondents' Joint Statement of Answer filed on: December 8, 1995.

Respondent Prudential's Submission Agreement signed on: December 5, 1995.

Respondent Klein did not execute a Submission Agreement as required pursuant to Section 10314 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions:	December 2, 1996	1 session
	January 9, 1997	1 session

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

### **CASE SUMMARY**

Claimants alleged that from October 13, 1989 through October 31, 1989, they were overcharged commissions on the purchase of Great Fingull Mining Stock ("Fingull") and Mistral Mining Stock ("Mistral"). Claimants alleged that they were supposed to be charged 2% commissions but, instead, were incorrectly charged 10% or more.

Claimants also alleged that there was a mathematical error made on all six of their accounts. Claimants asserted that every statement on the six different accounts had the same mathematical error for the purchases of Fingull. Claimants maintained that, rather than being charged .2087 cents per share of stock, each of the six accounts reflected a charge of .2487 cents per share of stock, a difference of 4 cents per share.

Claimants alleged that, in December 1990, respondent Klein was directed to sell all shares of Fingull Mistral for all six accounts at "market". Claimants contended that, at this time, the stock had an aggregate market value of \$60,000. Claimants further alleged that several weeks after these instructions were conveyed to Klein, respondent Klein informed claimants that the market was "illiquid" and that he did not sell the stock as instructed. Claimants further contended that, by that time, the stock was practically worthless.

Respondents denied claimants' allegations and maintained that the commissions charged the claimants were neither misrepresented nor miscalculated. Respondents alleged that claimant Ira Weinstein spoke with an attorney in Prudential's law department regarding the price of Fingull and maintained that the attorney informed Ira Weinstein that the billing price for the stock was correct.

Respondents also maintained that claimants did not instruct respondent Klein to sell their stock in December 1990. Respondents contended that claimants had previously filed a civil complaint in Kings County, New York pertaining to the alleged incorrect commissions charged them when they purchased Fingull. Respondents alleged that no mention was ever made in that civil complaint of a failure-by-respondent Klein to follow instructions to sell the stock. Respondents alleged that the civil complaint was subsequently discontinued without prejudice. Respondents contended that claimants waited five years to complain about the alleged failure by Klein to follow instructions.

Respondents maintained that the Statement of Claim was barred, in whole or in part, by the doctrines of waiver, laches, estoppel and ratification and by the applicable Statute of Limitations. Respondents also asserted that the claims did not set forth any actual reason why the claimants were entitled to reimbursement and contended that claimants did not allege specific wrongdoing with regard to their investments.

### **RELIEF REQUESTED**

Claimants requested the sum of \$10,274.00 for the excessive charge in commissions on shares of Fingull and Mistral; \$4,368 for the mathematical error made in all six accounts resulting in an overcharge for each share of Fingull and \$60,000.00 for respondents failure to sell the shares of Fingull and Mistral as instructed.

Respondents requested dismissal of all claims in their entirety, plus any other relief the panel deems appropriate.

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

Claimants submitted an Amended Statement of Claim on December 11, 1996. Pursuant to authority provided by Section 10328 of the Code of Arbitration Procedure, the panel denied claimants' request to

amend the Statement of Claim.

The parties 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 respondents are dismissed in their entirety.
2. Each party shall bear their own costs, including attorney's fees.
3. All other claims are denied.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 filing fee previously deposited by claimants and have assessed the following Forum Fees:

2 sessions X \$500	=	\$1,000.00
minus hearing session deposit of		<u>- 500.00</u>
TOTAL		\$500.00

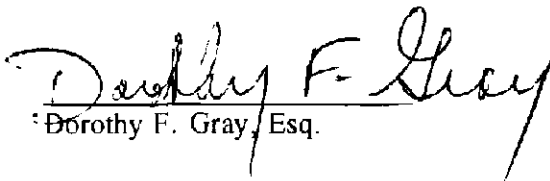
Claimants be and are hereby liable for the sum of \$500.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$500.00 with the NASD and therefore claimants owe nothing.

Respondents be and are hereby liable for the sum of \$500.00 representing one-half of the total amount of forum fees assessed. Respondents owe the NASD the sum of \$500.00

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures  
Name

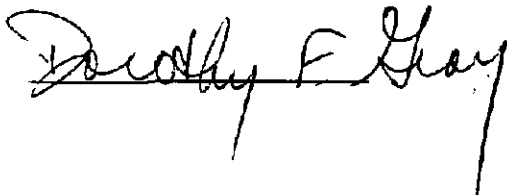
Bernard S. Carrey, Esq.

  
Dorothy F. Gray, Esq.

John S. Miller

NASD Date of Decision: January 29, 1997

I, Dorothy F. Gray, Esq., do hereby certify that this is my decision in the above-referenced matter.



Concurring Arbitrators' Signatures  
Name

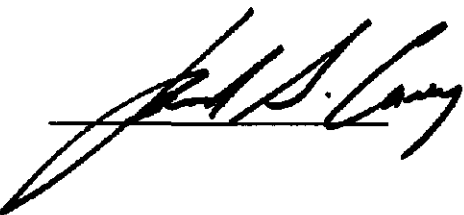
  
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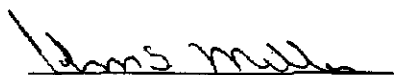
I, Bernard S. Carrey, Esq., do hereby certify that this is my decision in the above-referenced matter.

  
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Bernard S. Carrey, Esq.

Dorothy F. Gray, Esq.

  
John S. Miller

NASD Date of Decision: January 29, 1997

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