

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Joseph Feldman  
Ruth Feldman  
Edward Feldman  
Stephen Feldman a/c/f Rachel Feldman  
Stephen Feldman a/c/f Alex Feldman

96-00646

Name of Respondents

prudential Securities, Inc.  
Russo securities, Inc.  
Smith Barney Shearson, Inc.  
Joseph Blumenthal  
J.J. Morgan & Co.  
Gilford securities, Inc.

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J.J. Morgan & Co.  
Gilford securities, Inc.

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REPRESENTATION

For Claimants Joseph Feldman ("J. Feldman"), Ruth Feldman ("R. Feldman"), Edward Feldman ("E. Feldman"), and Stephen Feldman a/c/f Rachel and Alex Feldman ("S. Feldman"), collectively "Claimants", appeared Edward Reich, Esq., of the law offices of Cooperman Levitt Winikoff, Lester & Newman located in New York, New York.

For Respondent Prudential Securities, Inc. ("Prudential") appeared Robin Nackmar, Esq., in-house counsel for Prudential Securities, Inc. located in New York, New York.

For Respondent Russo Securities Inc. ("Russo") appeared Simon S. Kogan, Esq., who was subsequently replaced by Charles Manuel, Esq., a sole practitioner with offices located in New York, New York.

For Respondent Smith Barney Shearson, Inc. ("Smith Barney") appeared William Hohausser, Esq., in-house counsel for Smith Barney Shearson located in New York, New York.

For Respondent Joseph Blumenthal ("Blumenthal") appeared Michael F. Bachner, Esq., a sole practitioner with offices located in New York, New York, although Blumenthal and Mr. Bachner did not appear at the hearings.

For Respondent J.J. Morgan & Co. ("J.J. Morgan") appeared Mark Rottenberg, Esq. and Jill Rhodi, Esq., of the law offices of Anderson & Rottenberg, P.C., located in New York, New York.

For Respondent Gilford Securities, Inc. ("Gilford") appeared Joel Levinson, in-house counsel for Gilford Securities, Inc. located in New York, New York.

### **CASE INFORMATION**

Claimants' Joint Statement of Claim was filed on February 9, 1996.

J. Feldman's Submission Agreement was signed on February 8, 1996.

R. Feldman's Submission Agreement was signed on February 8, 1996.

E. Feldman's Submission Agreement was signed on February 7, 1996.

S. Feldman's submission Agreement for the custodial account for Rachel Feldman was signed on February 8, 1996.

S. Feldman's Submission Agreement for the custodial account for Alex Feldman was signed on February 8, 1996.

Prudential's Statement of Answer was filed on June 13, 1996.

Prudential did not sign a Submission Agreement.

Russo's Statement of Answer and Cross-claim against Blumenthal was filed on May 13, 1996.

Russo did not sign a Submission Agreement.

Smith Barney's Statement of Answer was filed on May 17, 1996.

Smith Barney's Submission Agreement was signed on May 17, 1996.

Blumenthal's Statement of Answer was filed on May 16, 1996.

Blumenthal did not sign a Submission Agreement.

J.J. Morgan's Statement of Answer was filed on April 24, 1996.

J.J. Morgan's Submission Agreement was signed on April 23, 1996.

Gilford's Statement of Answer and Motion to Dismiss was filed on May 9, 1996.

Gilford's Submission Agreement was signed on May 9, 1996.

### **HEARING INFORMATION**

Pre-Hearing Conferences:

June 3, 1997

One Session - Full Panel

June 17, 1997

One Session - Full Panel

September 22, 1997

One Session - Full Panel

Hearing Dates/Sessions:

September 3, 1997

Two Sessions

September 4, 1997

Two Sessions

September 5, 1997

One Session

January 20, 1998	Two Sessions
January 21, 1998	Two Sessions
February 2, 1998	One Session
May 12, 1998	Two Sessions
May 13, 1998	Two Sessions
May 14, 1998	Two Sessions

The pre-hearings on June 3, 1997 and September 22, 1997 and the hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimants alleged that Blumenthal was the registered representative for their accounts and represented to them that he was associated with Prudential, Smith Barney, Gilford, Morgan and Russo. Claimants asserted that Blumenthal induced them to invest in U-Can-Win stock and other equities. Claimants further asserted that Blumenthal represented to them that U-Can-Win was merging with another company, that the price would rise, that big short term profits could be made and that the profits could be converted to cash in order to be used for other investments. Claimants alleged that Blumenthal made unauthorized purchases in their accounts and made purchases that did not appear on their monthly account statements. Claimants further alleged that Blumenthal made excessive trades, misrepresented the price of stock purchased, and avoided sending Claimants their monthly statements. Claimants asserted that Blumenthal made misrepresentations, unsuitable recommendations and purchases, unauthorized purchases, and caused excessive trades. Claimants alleged that Russo, Morgan, Gilford, Smith Barney, and Prudential failed to supervise Blumenthal.

Prudential denied all allegations in the Statement of Claim. Prudential maintained that neither E. Feldman nor S. Feldman a/c/f Alex and Rachel Feldman maintained accounts with it. Prudential asserted that U-Can-Win stock was not purchased in any of the Claimants' accounts while they were at Prudential. Prudential further asserted that every transaction in the accounts was accounted for and that statements were mailed to the Claimants from Prudential's main office in New York. Prudential maintained that Claimants received confirmations for every transaction and at no time did they complain about a trade. Prudential further maintained that the Claimants approved and/or ratified every trade in their accounts. Prudential further maintained Claimants were sophisticated and experienced investors who were dissatisfied with their investments' performances.

Russo denied the allegations contained in the Statement of Claim. Russo maintained that all transactions were authorized by the Claimants and represent their own trading decisions. Russo further maintained that Claimants ratified the transactions. Russo alleged it is entitled to indemnification from Blumenthal for any losses.

Smith Barney denied all allegations in the Statement of Claim. Smith Barney maintained that only the Feldmans and S. Feldman a/c/f Rachel Feldman maintained accounts with it. Smith Barney further maintained that all statements were mailed to Claimants from its New York City office, and that Blumenthal did not have the authority to block such mailings. Smith Barney

asserted that Claimants received confirmations for each transaction, and that they **never** complained about any transaction made in their accounts. Smith Barney **maintained** that no losses were incurred in Claimants' accounts regarding U-Can-Win stock. Smith Barney **further** maintained that Claimants sold their positions of U-Can-Win stock at a profit.

Blumenthal denied the allegations contained in the Statement of Claim.

J.J. Morgan maintained that it acted at all times in **accordance** with applicable law, governing regulations, **and** custom in the industry in connection with the *opening* and *maintenance* of Claimants' accounts. J.J. Morgan asserted that Claimants were sophisticated investors whose investment objectives were speculative **securities**. J.J. Morgan maintained that Claimants received monthly **statements and trade confirmations** for their accounts. J.J. Morgan **further** maintained that Claimants never **objected**, in writing, to any activity in their **accounts**.

Gilford maintained that **claimants** were sophisticated investors who **understood and** accepted the **risks** associated with investing. Gilford maintained that Claimants authorized every **transaction** and received trade **confirmations and** monthly **statements**. Gilford maintained that, except for an issue **over** a commission, Claimants expressed no dissatisfaction with their **accounts or** Blumenthal. Gilford **further** maintained that it reimbursed J. Feldman for certain disputed commission **charges** in exchange for a release from the Feldmans which discharged Gilford and Blumenthal from any **further** liability with regard to their **securities** accounts.

#### **RELIEF REQUESTED**

Claimants requested:

- (a) On **Claim One** against Blumenthal, in an amount to **be determined** by the arbitration panel, but in no event less than **\$100,000.00**, together with attorneys' fees, punitive **damages**, and an award of costs;
- (b) On **Claim Two** against Blumenthal, in an amount to **be determined** by the arbitration panel, but in no event less than **\$100,000.00**, together with attorneys' fees, punitive **damages**, and an award of costs;
- (c) On **Claim Three** against Blumenthal, in an amount to be determined by the arbitration panel, but in no event less than **\$100,000.00**, together with attorneys' fees, punitive damages, and an award of costs;
- (d) On **Claim Four** against Russo, J.J. Morgan, Gilford, Smith Barney, and Prudential, jointly and severally, in an amount to **be determined** by the arbitration panel, but in no event less than **\$100,000.00**, together with attorneys' fees, punitive **damages**, and an award of costs; and
- (e) Such other and further relief as the arbitration panel may deem just and proper.

Prudential requested that the Statement of Claim **be** dismissed in its entirety, that it **be** awarded costs, **and** such other and further relief as the panel deems **just and** proper.

Russo requested that the Statement of Claim **be** dismissed in its entirety, that it **be** awarded its costs and disbursements, **and** such other and further relief as the panel may deem just and proper.

Russo, in its Cross-Claim, requested indemnification from Blumenthal in the event an award is rendered against it.

Smith Barney requested that the Statement of Claim as against it be dismissed and that it be awarded its costs, including attorneys' fees.

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

J.J. Morgan requested that the Statement of Claim as against it be dismissed, and that it be awarded its attorneys' fees, costs, and such other and further relief as the panel deem just and proper.

Gilford requested that the Statement of Claim be dismissed in its entirety, that Claimants be required to pay all filing and forum fees, and that Claimants be ordered to reimburse it for its reasonable expenses, including all lodging and travel costs, expert witness fees, attorneys' fees and costs.

#### **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 original remains on file with the NASD.

By letter dated December 16, 1997, Gilford indicated that it had settled with Stephen Feldman a/c/f Rachel and Alex Feldman and, further, that Edward Feldman withdrew his claim against Gilford, without prejudice.

The panel made the following determinations concerning Prudential, Russo, and Blumenthal who did not file Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Prudential and Russo were members of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Prudential and Russo pursuant to Rule 10301 of the Code.
3. The panel found that Blumenthal was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Blumenthal pursuant to Rule 10301 of the Code.
4. The panel found that Prudential, Russo, and Blumenthal were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code.

### **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. Blumenthal and Russo are hereby jointly and severally liable and shall pay Joseph Feldman compensatory damages in the amount of \$100,000.00, without pre-award interest.
2. Claimants' request for punitive damages is hereby denied.
3. Each party shall bear its own costs and attorneys' fees.
4. All other requests are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration procedure, Prudential Securities, Inc. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

pursuant to Rule 10333 of the Code of Arbitration Procedure, Russo Securities Inc. shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

pursuant to Rule 10333 of the Code of Arbitration Procedure, Smith Barney Shearson, Inc. shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

pursuant to Rule 10333 of the Code of Arbitration Procedure, J.J. Morgan & Co. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure Gilford Securities, Inc. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimants and the \$500.00 non-refundable filing fee deposited by Russo, and have assessed the following Forum Fees:

3 Pre-hearing conferences (full panel) x \$750.00	=	\$ 2,250.00
16 Hearing sessions x \$750.00	=	<u>\$12,000.00</u>

Total Forum Fees	=	\$14,250.00
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The panel has determined that Gilford shall not be assessed forum fees for hearings

conducted subsequent to Gilford's dismissal. Therefore, Gilford is liable for and shall pay the sum of **\$545.50, representing one-eleventh of the forum fees incurred prior to Gilford's dismissal.**

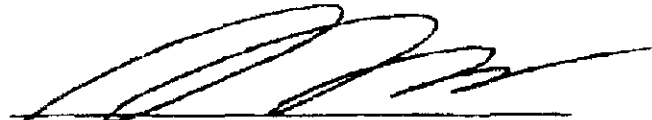
The panel has determined that the balance of the forum fees shall be assessed equally between the remaining parties, as follows:

1. J. Feldman be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.** J. Feldman previously deposited **\$750.00** with NASD Regulation, Inc., and, therefore, shall remit the **\$620.45 remaining balance.**
2. R. Feldman be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
3. E. Feldman be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
4. S. Feldman a/c/f Rachel Feldman be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
5. S. Feldman a/c/f Alex Feldman be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
6. Prudential be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
7. Russo be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
8. Smith Barney be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
9. Blumenthal be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**
10. J.J. Morgan be and hereby is liable for the sum of **\$1,370.45, representing one-tenth of the total forum fees assessed.**

**ARBITRATION PANEL**

Bernard S. Carrey, Esq.	-	Public Chairperson
C. Sidney Lester, Esq.	-	Public Arbitrator
Rick F. Suppa	-	Industry Arbitrator

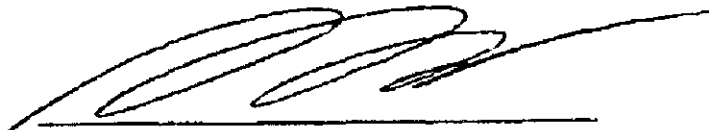
**CONCURRING ARBITRATOR'S SIGNATURE**



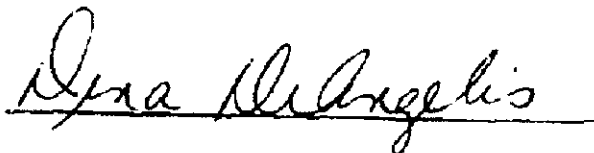
Rick F. Suppa  
Industry Arbitrator

Date of decision: September 11, 1998

I, Rick F. Suppa, 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.



Rick F. Suppa



DINA DEANGELIS  
Notary Public, State of New York  
No. 81088811888  
Qualified in Kings County  
Commission Expires 8/10/2000



**ARBITRATION PANEL**

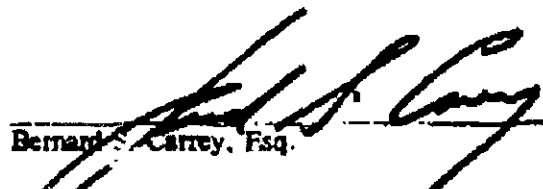
Bernard S. Carrey, Esq.	-	Public Chairperson
C. Sidney Lester, Esq.	-	Public Arbitrator
Rick F. Suppa	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
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Bernard S. Carrey, Esq.  
Chairperson - Public Arbitrator

Date of decision: September 11, 1998

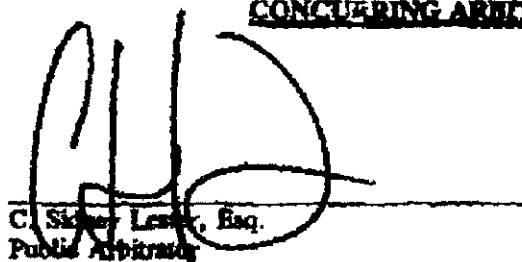
I, Bernard S. Carrey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Bernard S. Carrey, Esq.

**ARBITRATION PANEL**

Bernard S. Carrey, Esq.	-	Public Chairperson
C. Sidney Lester, Esq.	-	Public Arbitrator
Rick F. Suppa	-	Industry Arbitrator

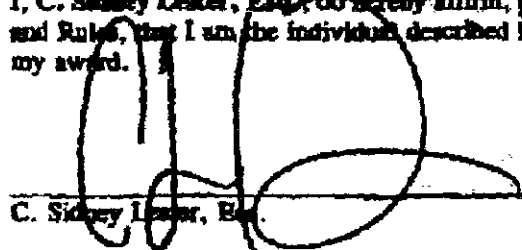
**CONCURRING ARBITRATOR'S SIGNATURE**



C. Sidney Lester, Esq.  
Public Arbitrator

Date of decision: September 11, 1998

I, C. Sidney Lester, 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.



C. Sidney Lester, Esq.