

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

96-00665

Name of Respondent

Seong Kyun Kim

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 14, 1996, Prudential Securities Inc. ("Claimant"), through its representative and counsel, Steven P. Gomberg, Esq., Gomberg Kane & Fischer, Ltd., alleged that Respondent Seong Kyun Kim ("Respondent") failed to honor his financial obligations to Claimant. Claimant further alleged that Respondent signed a Securities Agreement which allowed trading on margin. Claimant contended that on or about February 21, 1995, Respondent transferred account 004-883926 to the Claimant's Los Angeles Office and was assigned account number JQS-883924. Claimant further contended that on or about July 6, 1995 Respondent purchased 3,500 shares of Work Recovery Incorporated for a net cost of \$28,004.50. Claimant asserted that on or about July 21, 1995 Respondent purchased another 2,000 shares of Work Recovery Incorporated for a net cost of \$12,192.00, and further asserted that Respondent made various other transactions during July 1995 leaving the account in a net debit balance of \$22,185.40. Claimant alleged that on or about August 8, 1995 Claimant was forced to liquidate Respondent's 5,500 shares of Work Recovery Incorporated due to market depreciation and Respondent's failure to maintain adequate margin. Claimant further alleged that the account was charged margin interest in the amount of \$143.82 through August 18, 1995, leaving the account in a net unsecured debit balance of \$5,610.22. Claimant contended that it tendered a demand to Respondent to honor his obligation incurred by the transactions which occurred from July 1995 through August 1995, but Respondent has failed to honor this obligation, and further that the Respondent has not paid the fees and costs allowed by the Client's and Securities Agreements entered into between the parties. Claimant asserted that as a result of Respondent's actions, it has suffered damages for which the Respondent should be held liable.

Respondent Seong Kyun Kim failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Prudential Securities, Inc. requested \$5,610.22 in actual damages, and interest on this sum at the rate of 8.5% per annum. Claimant also requested costs of collection in the amount of \$678.76, plus attorneys' fees in the amount of \$417.50 incurred from August 18, 1995 to January 23, 1996.

In addition, Claimant requested additional costs of collection and attorneys' fees incurred from January 23, 1996 to the date of payment as allowed under the terms of the Client's and Securities Agreements and any other relief the Arbitrator may have deemed just.

Respondent Seong Kyun Kim failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Seong Kyun Kim was served by regular mail and was given an opportunity to respond which he failed to do. In addition, the Arbitrator's identity notification and overdue answer notice were served via certified mail and returned "unclaimed", indicating Respondent did not retrieve the package from the post office as he was required to do.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Seong Kyun Kim had notice of the Claim and was required to submit to this arbitration proceeding, and is therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert S. Clarke, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 8, 1996 but not signed by the Respondent as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Seong Kyun Kim is liable and shall pay to Claimant Prudential Securities, Inc. \$5,610.22 in actual damages.
2. Respondent Seong Kyun Kim is liable and shall pay to Claimant Prudential Securities, Inc. simple interest at the rate of 8.5% per annum from January 23, 1996 until the date of payment of the Award.

3. Pursuant to the terms of the Securities Agreement and the Client Agreement, Respondent Seong Kyun Kim is liable and shall pay to the Claimant Prudential Securities, Inc. attorneys' fees in the amount of \$417.50 and costs in the amount of \$678.76, incurred from August 18, 1995 to January 23, 1996, and, shall also pay to the Claimant additional costs and attorneys' fees incurred after January 23, 1996 in connection with the collection of this Award.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **Robert S. Clarke**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "R. S. Clarke", is written over a horizontal line.

Robert S. Clarke

DATE OF DECISION:

July 16, 1996