

NASD REGULATION, INC. AWARD**Office of Dispute Resolution****In the Matter of the Arbitration Between****Names of Claimants**

Samuel Kowalsky
Bernice Kowalsky

Case No. 98-01161

Names of Respondents

Prudential Securities, Inc.
Sandy Jukel

REPRESENTATION OF PARTIES

For Claimants: Arnold Y. Steinberg, Esq. of Investors' Rights, Inc., Fort Lauderdale, Florida.

For Respondents Prudential Securities, Inc. ("Prudential") and Sandy Jukel ("Jukel"): Marc Dobin, Esq. of the law firm of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: March 15, 1996. Claimants' Submission Agreement signed: March 8, 1996.

Statement of Answer filed by Respondent Jukel: June 14, 1996 and by Respondent Prudential: June 18, 1996. Respondent's Submission Agreement signed by Gabriel Loubler, First Vice President, on behalf of Prudential: June 18, 1996. Respondent Jukel did not file an executed Submission Agreement.

HEARING INFORMATION

Telephonic pre-hearing conferences were conducted on January 15 and 24, 1997 with an arbitrator presiding. A telephonic pre-hearing conference was conducted on May 21, 1997 with the panel presiding.

The evidentiary hearing was conducted on July 8, 1997 in Fort Lauderdale, Florida and on June 1, 2, and 3 and August 5 and 6, 1998 in Boca Raton, Florida lasting 11 sessions.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-01161
Award Page 2 of 4

CASE SUMMARY

Claimants alleged the following: that Jukel exerted substantial influence over the Claimants both in their securities purchases and in other financial and legal matters; that, in light of Claimants' objectives of long term investments and growth, Jukel engaged in excessive trading of Claimants' account, and Prudential failed to adequately supervise Jukel; and, that Prudential's actions constituted a breach of its fiduciary duties to the Claimants. Claimants sought redress for the following investments: Euro Disney, Health Infusion, Spectrum, and Centocor.

Respondents denied the allegations set forth in the Statement of Claim and specifically asserted the following: that Claimants were long-time customers of Jukel; that Claimants had purchased stocks previously and were active traders at Merrill Lynch Pierce Fenner & Smith, Inc., the brokerage firm from which they transferred their accounts to Prudential when Jukel moved from one firm to the other; that Mr. Kowalsky called and visited the Prudential office regularly and Jukel kept the Claimants apprised of the status of their accounts at all times; that Prudential was not liable for Claimants' losses in Centocor stock, which was a suitable recommendation at the time it was made; that Claimants' losses were not due to any wrongdoing by Respondents; that Claimants knowingly made investments involving risks; that, after sustaining a \$56,000.00 loss in Centocor, Mr. Kowalsky placed an unsolicited order, against Jukel's explicit advice, to purchase 2,000 more shares of the stock; and, that said transaction resulted in the loss of an additional \$19,000.00.

Respondents asserted the affirmative defenses of assumption of risk, laches, contributory negligence, ratification, and release as a result of participation in class actions.

RELIEF REQUESTED

Claimants requested an award in the amount of \$216,000.00 plus interest, punitive damages, and attorney's fees.

Respondent Prudential requested a dismissal of all claims, attorney's fees, and costs.

Respondent Jukel requested a dismissal of all claims and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent Jukel obtained a Discharge of Debtor(s), dated August 20, 1997, from the U.S. Bankruptcy Court for the Southern District of Florida, Case Number 97-13378-AJC. Therefore, this panel made no determination regarding the liability of Respondent Jukel.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-01161
Award Page 3 of 4

2. 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 Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimants' requests for punitive damages and attorney's fees are denied.
3. Prudential's requests for attorney's fees and costs are denied.
4. Prudential shall pay to the Claimants the sum of \$750.00 representing reimbursement of the hearing session deposit previously made by the Claimants.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$9,600.00 (two pre-hearing conferences x \$300.00 per session, one pre-hearing conference x \$750.00 per session, plus 11 hearing sessions x \$750.00 per session).

Respondent Prudential is assessed the sum of \$9,600.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by the Claimants, leaving a balance due in the amount of \$8,850.00. Claimants will be reimbursed as set forth in the "Award" section, above.

OTHER FEES

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

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-01161
Award Page 4 of 4

Pursuant to Rule 10332 of the Code, Claimants have paid to NASD Regulation, Inc. the \$200.00 claim filing fee.

Pursuant to Rule 10319 of the Code, Claimants shall pay to NASD Regulation, Inc. the \$750.00 postponement fee for the hearing scheduled to commence on April 14, 1997.

Pursuant to Rule 10319 of the Code, Respondents have paid to NASD Regulation, Inc. \$500.00 representing 50% of the postponement fee for the second and subsequent sessions of the hearing which commenced on July 8, 1997.

Pursuant to Rule 10319 of the Code, Claimants shall pay to NASD Regulation, Inc. \$500.00 representing 50% of the postponement fee for the second and subsequent sessions of the hearing which commenced on July 8, 1997.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Randy R. Freedman, Esq.
Public Arbitrator, Presiding Chair

/s/

J. Porter McClean
Public Arbitrator

/s/

Lucie L. Sabella
Industry Arbitrator

Date of Decision: 8-31-98