

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Robert L. Huff;

and

96-01367

Names of Respondents

Prudential Securities Inc. and
Gerald Kissner.

REPRESENTATION OF PARTIES

Claimant Robert L. Huff ("Huff") was represented by John E. O'Neill, Esq. of Clements, O'Neill, Pierce & Nickens in Houston, Texas.

Respondent Prudential Securities Inc. ("Prudential") and Respondent Gerald Kissner ("Kissner") were represented by David D. Sterling, Esq. of Baker & Botts in Houston, Texas.

CASE INFORMATION

Statement of Claim filed on: April 23, 1996.

Claimant's Submission Agreement signed on: February 23, 1996 by Robert L. Huff.

Respondents' joint Statement of Answer filed on: July 1, 1996.

Respondent Prudential's Submission Agreement signed on: June 28, 1996 by Robert S. Getman, Vice President of Prudential Securities, Inc.

Respondent Kissner's Submission Agreement signed on: June 27, 1996 by Gerald Kissner.

HEARING INFORMATION

Pre-hearing Conference: None held.

Hearing Sessions: March 12, 1997 for two (2) sessions;
March 13, 1997 for three (3) sessions; and
March 14, 1997 for two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Huff made allegations of fraud, unsuitable trading, §10(b)(5) violations, § 9 of the 1934 Securities Exchange Act violations, and market manipulation against the Respondents. Huff specifically alleged that:

1. Huff opened a Prudential account in 1992.
2. Huff sought safe, low-risk, principal-preserving securities.
3. Respondents obtained material non-public information and based on that, persuaded Huff to purchase WRT Energy Corp. ("WRT") assuring Huff that WRT was consistent with Huff's investment objectives. WRT was a highly speculative security.
4. Relying on Respondents representations, Huff heavily invested in WRT securities.
5. As WRT's value began to decline, Huff instructed Respondents to sell and/or obtained Respondents' advice regarding WRT's safety. Respondents repeatedly reassured Huff that WRT was safe and would regain its value.
6. By February, 1996 Huff's account had lost \$218,000.00 because of WRT's value decline.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically claimed that:

1. Huff was a wealthy, experienced, speculative investor.
2. Huff did not seek low-risk securities, but rather, speculative investments.
3. Respondents based WRT recommendations on public information.
4. Respondents recommended that Huff sell portions of his WRT investment and diversify his portfolio given his large WRT holding;

5. In spite of Respondents recommendations otherwise, Huff continued to increase his WRT investment.
6. Huff did not sell the security nor mitigate his damages in spite of WRT's decrease in value.
7. Even if Respondents relied on non-public information in recommending WRT, Huff took wrongful advantage of such information and may not recover any damages as such.
8. Huff may not recover based upon the affirmative defenses of failure to mitigate damages, ratification, waiver and estoppel.
9. Furthermore, Huff was bound by his signed customer agreement. According to this agreement, Huff's must object to improper trading in writing. Huff never objected and therefore, may not recover for his losses.

RELIEF REQUESTED

Claimant requested an award in the amounts of \$218,000.00 for out-of-pocket losses; \$50,000.00 in additional actual damages; interest at the rate of 10% per annum; \$1,000,000.00 in punitive damages; and \$25,000.00 in attorneys' fees.

Respondents denied the claims asserted against them and asked the panel to award them costs and fees.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondents Prudential Securities, Inc. and Gerald Kissner are jointly and severally liable for and shall pay to claimant Robert L. Huff the amount of \$246,000.50 as compensatory damages;
2. Respondents Prudential Securities, Inc. and Gerald Kissner are jointly and severally liable for and shall pay to claimant Robert L. Huff the amount of \$500,000.00 as punitive damages. In deciding to award punitive damages, the undersigned arbitrators considered the pleadings, the evidence and the testimony presented by the parties. A majority of the arbitrators found that the broker received free stock, failed to disclose receipt of the free stock to the customer and sold free stock from the same company in which he received the free stock to the customer without disclosure and at a profit;
3. Prudential Securities, Inc. and Gerald Kissner are jointly and severally liable to Robert L. Huff in the amount of \$67,000.00 as attorneys' fees. In deciding to award attorneys' fees, the undersigned arbitrators considered the pleadings, the evidence and the testimony presented by the parties;
4. The parties shall bear their own costs with the exception of forum fees which are specifically addressed below; and
5. Any relief not specifically granted herein is hereby denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300 for each pre-hearing conference, if any. There were seven (7) sessions x \$1,000.00 = \$7,000.00 in forum fees. Pursuant to §10332(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Claimant Robert L. Huff is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$2,500.00 in additional forum fees.

Pursuant to §10332 and 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500.00. Respondents Prudential Securities Inc. and Gerald Kissner are jointly and severally liable for and shall

pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$3,500.00 in forum fees.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Arbitrators' Signatures:

Dated:

Sharon Jevert Hemphill, Esq.

April 23, 1997

Sharon Jevert Hemphill, Esq.
Public Arbitrator, Presiding Chair

Charlotte F. Simpson

April 21, 1997

Charlotte F. Simpson
Public Arbitrator

Vernon Keith Roberts

April 25, 1997

Vernon Keith Roberts
Industry Arbitrator

Date served by NASD Regulation, Inc. Office of Dispute Resolution:

April 25, 1997

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.
OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between

Name of Claimant

Robert L. Huff

REPORT OF ARBITRATORS
CASE NUMBER 96-01367

Names of Respondents

Prudential Securities, Inc. and
Gerald Kissner

During the course of the hearing in the above captioned arbitration matter, the undersigned arbitrators heard testimony and evidence which called into question the Respondents receipt of free stock, failure to disclose free stock and/or selling free stock. The undersigned arbitrators feel that the District Office of the National Association of Securities Dealers Regulation, Inc. should investigate the matter to determine whether there were any violations of the Rules of Fair Practice.

Arbitrators' Signatures

Sharon Jevert Hemphill, Esq.
Sharon Jevert Hemphill, Esq.

Charlotte F. Simpson
Charlotte F. Simpson

Vernon Keith Roberts
Vernon Keith Roberts