

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

George W. Fogleman

96-02065

Name of Respondent

Prudential Securities Inc

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 13, 1996, Claimant George W. Fogleman ("Claimant") who appeared Pro Se, alleged that in March 1994 he transferred his Individual Retirement Account to Respondent Prudential Securities, Inc. ("Respondent") under special conditions. Claimant further alleged that in February 1995 he requested a transfer of all his funds because he thought that his Financial Advisor Robert Fonorow was mishandling one of his other accounts. Claimant also alleged that Respondent effected a transfer from one account to another and stopped paying him interest in April 1994. Claimant asserted that Respondent failed to transfer the money to Datalynx, as he had requested. Claimant further asserted that Respondent advised that they did "not know where the money was." Claimant also asserted that the money was finally received by Datalynx on May 31, 1995. Claimant contended that Respondent is liable for damages. Claimant further contended that he followed the proper procedures for the transfer. Claimant also contended that Respondent's Answer is late and should not be accepted.

Respondent Prudential Securities, Inc. through its representative and in-house counsel, Gary Klein, Esq., maintained that Claimant opened a Managed Assets Consulting Account which gave his Asset Manager Jurica and Voyles, Inc., discretionary control over his investments. Respondent further maintained that Claimant's account was managed in accordance with the firm's policy. Respondent also maintained that Claimant's account generated approximately \$3,053 during the 14 month period that it was open. Respondent asserted that Claimant was liable for his own negligence, as he provided the wrong account number to the transfer agent. Respondent further asserted that Claimant's funds could have been transferred without undue delay if he had not rescinded his Managed Account Agreement. Respondent also asserted that the claim should be dismissed as Claimant failed to state a cause of action upon which relief can be granted. Respondent further maintained that Claimant is responsible for the cost of defending the spurious claims. Respondent contended that their transfer department correctly informed Claimant that there were no funds in the account which he directed that department to transfer.

Respondent further contended that Claimant is not entitled to a termination fee since Respondent did not breach the client agreements. Respondent also contended that Claimant is not entitled to interest, "foregone dividends" or punitive damages.

Respondent counterclaims that Claimant is liable for the cost of maintaining this arbitration.

RELIEF REQUESTED

Claimant George Fogleman requested \$10,000 in damages as follows:- Termination Fee \$55.80, Interest \$32.96, Gains of \$4418.56, Punitive and Treble Damages of \$5,492.68.

Respondent Prudential Securities, Inc. requested that the claim be dismissed in its entirety and that it be awarded costs and attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator considered and reviewed all documentation submitted by the parties concerning Claimant's Request to Bar Respondents Late Answer. The Arbitrator denied the request.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Wayne Parker, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 30, 1996 and by the Respondent on November 6, 1996.

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. The claim of Claimant George W. Fogleman against Respondent Prudential Securities, Inc. is dismissed in its entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent is liable and shall pay to the Claimant \$75.00 as reimbursement of one half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **WAYNE PARKER** 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.

Wayne Parker
Signature of Arbitrator

DATE OF DECISION: November 27, 1996