

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Steven Roberts

and

96-02127

Name of Respondent

Prudential Securities, Inc.
Thomas Sachs

REPRESENTATION OF PARTIES

Steven Roberts ("**Claimant**") was represented by Joseph W. Anthony, Esq. And Steven M. Phillips, Esq., Fruth & Anthony, P.A., Minneapolis, Minnesota.

Prudential Securities, Inc. ("**Respondent Prudential**") and Thomas Sachs ("**Respondent Sachs**") were represented by Terry Ross, Esq. and Richard W. Smirl, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

The Statement of Claim was filed on or about May 17, 1996. Submission Agreement of Claimant Steven Roberts was signed on May 13, 1996.

Statement of Answer and Counterclaim was filed by Respondents Prudential Securities, Inc. And Thomas Sachs on or about July 15, 1996. Submission Agreement of Respondent Prudential Securities, Inc. was signed on July 10, 1996 by Patrick Gaffney. Submission Agreement of Respondent Thomas Sachs was signed on June 28, 1996.

HEARING INFORMATION

A pre-hearing conference was held on October 2, 1997, for one (1) session. D. Randall Blohm, Esq. presiding.

The hearing was held on Monday, October 27, 1997, for two (2) sessions. Tuesday, October 28, 1997, for two (2) sessions, Wednesday, October 29, 1997, for two (2) sessions, Thursday, October

30, 1997, for two (2) sessions, Friday, October 31, 1997, for two (2) sessions, and Monday, November 24, 1997 for one (1) session in Minneapolis, Minnesota for a total of one (1) pre-hearing and eleven (11) hearing sessions.

CASE SUMMARY

Claimant alleged that Prudential registered representative Sachs, who held himself out to be a financial advisor, engaged in transactions in Claimant's account with Prudential that were excessive, not in Claimant's best interest, and which were designed to generate excessive commissions for the benefit of Sachs. Claimant further alleged that certain transactions in his account with Prudential were unauthorized. Claimant's legal claims were asserted under the Minnesota statutes governing financial planners, the federal and Minnesota state securities laws, and the common law of fraud, negligence and breach of fiduciary duty. Claimant also alleged that Prudential failed to exercise proper supervision over Sachs' handling of Claimant's account and that it was liable to Claimant under a legal claim of respondeat superior liability.

Respondents deny each and every allegation of wrongdoing and liability set forth and/or implied in Claimant's Statement of Claim. Respondents deny that Claimant has been injured in the amount claimed, or in any amount, by virtue of any conduct of Respondents.

Respondents also stated that Claimant's allegations are factually inaccurate and legally deficient. Claimant's action—whether denominated as claims for unsuitability, churning, unauthorized trading, fraud, misrepresentation, negligence, and breach of fiduciary duty—is nothing more than a misguided attempt, in hindsight, to revisit the wisdom of prior investment decisions. Respondents assert that Claimant authorized each and every transaction about which he now complains. Furthermore, the investments made by Claimant were suitable for him in light of the disclosures that Claimant made to Respondents about his investment experience, objectives, risk tolerance and net worth. Therefore, Claimant's attempt to recover for his alleged losses is wholly inappropriate.

In addition, Respondents stated that Claimant is a 47-year-old, highly successful entrepreneur and real estate developer who has amassed a fortune well in excess of \$20 million. He is also a sophisticated investor with extensive experience trading securities. Besides his interaction with Respondent Sachs, Claimant dealt with numerous financial advisors and brokerage firms who regularly advised him about his investments. Claimant maintained prior to, and during the time his account was open at Prudential, brokerage accounts with at least five other firms, including Piper Jaffray, Smith Barney, Kinnard, Arnold, and Miller Johnson. Claimant traded and continues to trade aggressively in speculative stocks with these other firms. Finally, at least two of these accounts were on margin. In fact, as recently as two months ago, Claimant's account at Smith Barney was heavily leveraged. Moreover, Claimant continues to trade in many of the same stocks that are at issue in this case.

Respondents further stated that Claimant's initial transactions at Prudential with Mr. Sachs were extremely profitable. In fact, Claimant was so enamored with Mr. Sachs and the success of his Prudential account that he voluntarily attempted to give Mr. Sachs a gift of gold coins. Of course, Mr. Sachs returned the gold coins. Apparently, based on this success and lack thereof at other brokerage firms, in 1993 and early 1994 Claimant transferred a portion of his assets from his other brokerage accounts to his Prudential account. Additionally, Claimant continued to trade aggressively throughout the first six months of 1994. Claimant also continued to receive investment advice from sources other than Respondents. Indeed, Claimant regularly discussed various investment ideas that he had gleaned from other sources with Mr. Sachs. In fact, many of the trades in the account, particularly those after mid-1994, were unsolicited and obtained from other sources, including Claimant's father. Unfortunately, 1994 was a difficult period for the equity market and in particular growth stocks, and Claimant's portfolio reflected this downturn losing most of his prior profits. But, market fluctuations are a reality that any person investing over a million dollars in the stock market—no less a sophisticated businessman—well understands.

In conclusion, Respondents stated that Claimant controlled and directed all the trading in the account. With each investment, Claimant was fully apprised of the risks involved. Any losses suffered by Claimant in the decline in value of his positions are the result of unforeseen changes in the market and individual companies in which Claimant chose to invest. Claimant was aware of the risks associated with his investments but, nonetheless, made an informed decision to invest in light of the potentially great rewards. Claimant's effort to make Respondents the insurer and guarantor of his investment decisions is not supportable.

RELIEF REQUESTED

Claimant requested judgment in an amount to be determined by the Panel, including his out-of-pocket loss in an amount of at least \$1,565,171, return of excessive commissions and margin interest, and recovery of his costs and disbursements, attorneys' fees, expert witness fees, and interest, together with such other and further relief as the panel may deem just and proper.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' 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 the 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 Thomas Sachs shall be and hereby are jointly and severally liable for and shall pay to the Claimant Steven Roberts the sum of \$1,588.634 as compensatory damages.
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of October 1, 1997 to and inclusive of the date this award is paid in full.
3. Respondents Prudential Securities, Inc. and Thomas Sachs shall be and hereby are jointly and severally liable for and shall pay to the Claimant Steven Roberts the sum of \$65,378.25 as attorneys' fees. This award of attorneys' fees is made pursuant to Minn. Stat. §80A.23.
4. Respondents Prudential Securities, Inc. and Thomas Sachs shall be and hereby are jointly and severally liable for and shall pay to the Claimant Steven Roberts the sum of \$18,905.75 as costs.
5. All relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were eleven (11) sessions x \$1,000 and one (1) session x \$300 = \$11,300 in forum fees. Pursuant to Rule 10332(b) 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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Steven Roberts. Claimant Steven Roberts shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$4,650 as additional forum fees. Respondents Prudential Securities, Inc. and Thomas Sachs shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$5,650 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500 previously paid to the NASD by Respondent Prudential. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ D. Randall Blohm, Esq.

D. Randall Blohm, Esq.
Public Arbitrator, Presiding Chair

December 5, 1997

/s/ Arlen G. Restad

Arlen G. Restad
Public Arbitrator

December 5, 1997

/s/ Emily B. Boote

Emily B. Boote
Industry Arbitrator

December 7, 1997