

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

96-2434

Maxwell Lewitus Living Trust

Name of Respondents

*Prudential Securities Inc
Janney Montgomery Scott Inc.

CASE SUMMARY

In a case filed with the National Association of Securities Dealers, Inc. on May 7, 1996, claimant Maxwell Lewitus TTEE of Living Trust of Maxwell Lewitus ("claimant"), who appeared Pro Se, alleged that on January 24, 1989, he bought shares in Dreyfus Premier Florida Tax Exempt Bond Fund ("DPFTEBF") at Thomson McKinnon ("Thomson"). Claimant contended that the shares were to be sent to Dreyfus to set up an account for him at the fund. Claimant further alleged that on January 31, 1989 the shares were delivered from his Thomson account to his Dreyfus Fund. Claimant also alleged that the dividends were subsequently paid to Thomson thru 1989. Claimant asserted that when the assets of Thomson were taken over by Prudentid Securities, Inc. ("Prudential") in 1990, his shares were transferred from the house account at Thomson to Prudential's house account. Claimant further asserted that he received a letter from Dreyfus stating that 709 shares of premier Municipal Bond Fund-Florida in-house at Prudential were beneficially owned by him. Claimant also asserted that on January 13, 1992, Prudential transferred 709 shares of his fund to Montgomery & Scott ("Janney") for sale. Claimant contended that he did not receive any of the proceeds from this sale. Claimant further contended that he received a settlement of \$7,500.00 from Thomson's bankruptcy claims account.

Respondent Janney Montgomery & Scott, Inc. ("Janney") maintained that claimant purchased 10,000 shares of DPFTEBF through Thomson. Respondent Janney further maintained that claimant alleged that these shares were to be held by Dreyfus in a new-created account in claimant's name. However, Thomson never created this account and never transferred the shares to Dreyfus. Allegedly the shares were held by Thomson in a Thomson account. Respondent Janney further contended that when Thomson declared bankruptcy in 1990, Thomson's assets were transferred to Prudential for liquidation. Respondent Janney further contended that claimant's Dreyfus shares, which were still being held in a Thomson house account, were apparently transferred to a Prudential house account. In 1992, Prudential transferred its remaining Thomson shares to Janney for liquidation. Respondent Janney maintained that it was not provided with any ownership or account information regarding these shares except that they had originated in a Thomson account. Respondent Janney further maintained that they never possessec. an account with claimant's name. Respondent Janney also maintained that they were told to liquidate the shares pursuant to the instruction of Thomson's bankruptcy liquidator, and remitted the proceeds of the sales to him. Respondent Janney contended that it never had any relationship whatsoever, contractual or otherwise, with claimant.

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Respondent Prudential Securities, Inc. ("Prudential") maintained that according to claimant's Thomson account statements and trade confirmation, claimant purchased 819 shares of the Dreyfus Fund at \$12.22 per share on or about January 31, 1989. Respondent Prudential further maintained that on or about January 24, 1989, 709 shares of the same Dreyfus Fund were purchased in street name through Thomson's house account. Respondent Prudential also maintained that these shares were transferred to it on or about February 7, 1990. Respondent Prudential contended that these are the shares that claimant contended that he purchased at Thomson on January 31, 1989. Respondent Prudential further Contended that Section 10304 of the NASD Code of Arbitration Procedure, prohibits claimant from arbitrating the allegations in the Statement of Claim; because these transaction occurred over six years from the date on which the 709 shares were transferred from Thomson to Prudential. Respondent Prudential also contended claimant is asking it to defend a transfer of shares that occurred six years ago at a brokerage firm that has since gone out of business.

RELIEF REQUESTED

Claimant Maxwell Lewitus Living Trust requested \$6,300.00 in actual damages, plus \$459.00 in attorneys' fees.

Respondent Janney Montgomery & Scott, Inc. requested that the claims of the claimant be dismissed in their entirety, with costs, fees and other relief as may be deemed appropriate.

Respondent Prudential Securities, Inc. requested that the claims of the claimant be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator considered and reviewed all documentation submitted by the parties regarding Prudential Securities, Inc.'s Motion to Dismiss pursuant to Section 10304 of the NASD Code of Arbitration Procedure and Janney Montgomery Scott, Inc.'s Motion to Dismiss and/or for More Definite Statement. The Arbitrator denied the motions.

AWARD

Pursuant to Section 10302 of the NASDR, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stan West, was selected to review the matter in controversy between the parties as set forth in submissions to Arbitration signed by the claimant Maxwell Lewitus Living Trust on May 14, 1996 and by respondent Janney Montgomery & Scott, Inc. on August 16, 1996 and by respondent Prudential Securities, Inc. on July 22, 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. Claimant Maxwell Lewitus Living Trust claims against respondents Janney Montgomery & Scott, Inc. and Prudential Securities, Inc. are dismissed in their entirety.
2. All other relief requests are denied.
3. The parties shall bear their respective costs, including attorneys' fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant shall be retained by NASD Regulation, Inc.

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AFFIRMATION

I. **STAN WEST**, 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.

Stan West
STAN WEST

DATE OF DECISION: NOVEMBER 15, 1996