

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Murray G. Greenberg

96-03599

Name of Respondents

Prudential Securities, Inc.
John P. Kneafsey

REPRESENTATION

Claimant Murray G. Greenberg ("Claimant") was represented by John H. West, III, Esq., Baltimore, MD.

Respondents Prudential Securities, Inc. ("PSI") and John P. Kneafsey ("Kneafsey") were represented by Christopher Freeze, Assistant General Counsel, Prudential Securities, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed August 20, 1996.
Claimant's Submission Agreement was signed on August 16, 1996.

The Joint Statement of Answer filed by PSI and Kneafsey (collectively "Respondent") was filed November 22, 1996.

HEARING INFORMATION

Pre-Hearing Conference Date/Sessions: May 19, 1997/one session

Hearing Dates/Sessions: June 19, 1997/two sessions
June 20, 1997/three sessions

Hearing Location: Doubletree Hotel
Baltimore, MD

CASE SUMMARY

Claimant alleged that Respondents induced Claimant to authorize inappropriate transactions by misrepresenting the nature of the investments and omitting the material information concerning the nature of the risk necessary for Claimant to make an informed decision. Claimant asserted that he opened two accounts with Respondents in November 1993 and Respondents were informed that the objectives for these accounts were safety of principal and long-term growth. Because the accounts included funds for Claimant's retirement, Claimant alleged that it was repeatedly emphasized to Respondents that Claimant's

highest priority was protection of principal in sound investments which were low risk. Claimant alleged that on February 8, 1994, absent consultation or agreement by Claimant, Kneafsey utilized \$19,765.00 from one account to purchase 20,000 senior notes of Lomas Financial Corporation ("Lomas") and \$4,945.00 from the other account to purchase additional positions in Lomas. Claimant alleged that neither at the time of the purchase nor at any time thereafter, did Respondents ever advise Claimant of the high risk involved in this investment even though Claimant specifically inquired following receipt of the statements. Claimant asserted that when he raised concern over these investments, Respondents reassured him that the securities were appropriate for the needs and objectives of his accounts. Claimant alleged that over the months following the purchase of Lomas, the value dropped precipitously while Respondents continued to conceal the true nature of the investment and the adverse outlook for Lomas' investment until Lomas Financial Corporation filed for bankruptcy in October 1995. Claimant also alleged that Respondents' actions constituted unauthorized trading, a breach of contract, a breach of their fiduciary duty to Claimant, negligence and negligent misrepresentation.

Respondents denied all allegations of misconduct as asserted in the Statement of Claim. Respondents maintained that Kneafsey and Claimant had engaged in a social relationship for approximately two years prior to Claimant transferring his accounts from A.G. Edwards to PSI. Respondents maintained that when he opened his accounts, Claimant stated he had an annual income of approximately \$100,000.00, a net worth of approximately \$100,000.00, a liquid net worth of \$50,000.00, that he was 57 years old, and married with no dependents. At the time Claimant transferred his accounts, Respondents maintained that Claimant had an investment portfolio of approximately \$263,685.00. Respondents maintained that Kneafsey had followed Lomas for approximately five years and was himself a holder of the Notes, all of which was first discussed with Claimant shortly after Claimant opened his accounts with Respondents. Respondents maintained that Claimant informed Kneafsey that he was interested in investing in Lomas and they agreed to discuss it again later, which they did in January 1994. At the time of their second discussion concerning Lomas, Respondents maintained that Claimant instructed Kneafsey to purchase Lomas in both Claimant's accounts which Kneafsey confirmed in a follow-up letter to Claimant. Respondents maintained that as Lomas began to decline Claimant was kept apprised because Respondents sent information received from Lomas directly to Claimant including news, research reports, and press releases. Respondents maintained that on several occasions Kneafsey spoke on the telephone with Claimant about Lomas and even with the risk, Claimant decided to hold his positions in Lomas. Respondents maintained that Claimant was fully and regularly informed on the status of his investments and his accounts were handled in a professional manner. Respondents maintained that Claimant was not deceived and that all transactions in Claimant's accounts were authorized, accepted and ratified all investments. Respondents raised the affirmative defenses of ratification; assumption of risk; a failure to mitigate; laches, waiver, and estoppel; and that Claimant failed to state a claim upon which relief can be granted. Respondents maintained that any loss suffered by Claimant was the result of Claimant's own decisions and market conditions.

RELIEF REQUESTED

Claimant requested damages of \$50,000.00, plus interest; attorney's fees and the costs of this arbitration.

Respondents requested that the Statement of Claim be dismissed and that the costs of this arbitration be assessed to Claimant.

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 originals remain on file with the NASD.

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. That Respondents PSI and Kneafsey are jointly and severally liable to and shall pay to Claimant \$12,700.00 and upon receipt Claimant will transfer his ownership interests in the Lomas Bonds to Respondents.
2. That the claim for punitive damages is denied.
3. That each party shall pay its own costs and expenses, including attorney's fees, with the exception of Forum Fees which are specifically addressed below.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 Prehearing Session x \$300.00 =	\$ 300.00
5 Hearing Sessions x \$500.00 =	\$2,500.00
Total Forum Fees	\$2,800.00

Forum Fees are assessed at \$1,400.00 to Claimant and \$1,400.00 to Respondents, jointly and severally. Claimant shall receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$900.00. Respondents have a net assessment due of \$1,400.00.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent PSI is assessed a member surcharge of \$300.00. Respondent PSI is to receive credit for the surcharge deposit previously submitted to the NASD Regulation leaving no further surcharge due.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

July 2, 1997

Michael Fischetti
Michael Fischetti, Presiding
Public Arbitrator

Patrick Sean Dolan
Public Arbitrator

Pierre J. Dolan
Industry Arbitrator

Date Decision Served by NASD Regulation:

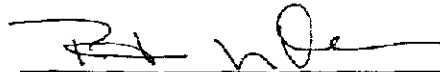
July 18, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Michael Fischetti, Presiding
Public Arbitrator

July 2nd '97



Patrick Sean Dolan
Public Arbitrator

Pierre J. Dolan
Industry Arbitrator

Date Decision Served by NASD Regulation:

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