

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

JoAnn T. Lumsden

96-03967

Name of Respondents

Prudential Securities Inc
Prudential Sec-Managed Assets Consulting
Kenneth Tamashiro
David Farrington

REPRESENTATION

Claimant JoAnn T. Lumsden ("claimant") appeared Pro Se.

For respondent Kenneth Tamashiro ("Tamashiro") appeared his attorney Michael T. Medford.

Prior to the hearing on the merits, claimant notified NASD Regulation that the claims against respondents Prudential Securities Inc., Prudential Securities Managed Assets Consulting and David Farrington that had been settled.

CASE INFORMATION

Statement of Claim filed: September 5, 1996.

Claimant's Submission Agreement signed on: August 30, 1996.

Respondents Prudential Securities Inc., Prudential Securities Managed Assets Consulting and David Farrington did not file Statements of Answer or Submission Agreements prior to settling this matter with claimant.

Respondent Tamashiro failed to file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: April 23, 1997 - two sessions

The hearings were conducted at The Velvet Cloak Inn located in Raleigh, North Carolina.

CASE SUMMARY

Claimant, a 59 year-old woman, alleged that in 1994 her husband died resulting in her receiving \$237,000 in insurance proceeds and \$196,325.59 from an IRA rollover. Claimant further alleged that she took the money to respondent Tamashiro, a Prudential Securities employee, and informed him that she wanted cash flow, wanted access to emergency funds and wanted to invest conservatively. Claimant also alleged that Tamashiro churned her account and failed to respond to her numerous complaints. Claimant contended that respondent Farrington failed to supervise and failed to respond to her complaints.

Claimant asserted that there were 17 buy/sell transactions in her accounts within a nineteen month period from October 1994 to May 1996. Claimant also asserted that in some cases, the securities were held less than one month. Claimant further asserted that respondents transferred cash from her MAC account to her IRA upon which securities would be purchased and transferred back to her MAC and sold. Claimant contended that this process would be done in a very short period of time resulting in fees, sales charges and commissions.

Claimant alleged that in November of 1994, she gave Tamashiro a \$50,000.00 check and asked that it not be invested but place in a money market account because she needed it for expenses. Claimant further alleged that she withdrew from the account and after she had taken out only \$18,000.00 the account had a negative balance. Claimant also alleged that Tamashiro suggested that she have a margin account which she resisted but ended up getting a margin account. Claimant contended that Tamashiro did not follow her instructions to set up her accounts so that she would have a monthly stream of income.

Claimant contended that in May of 1996, she met with Tamashiro and after the meeting decided to move her accounts from Prudential because of the improper transactions that had occurred in her account. Claimant further contended that as a result of the above, she has suffered losses for which the respondents should be held liable.

Respondent Tamashiro did not file a Statement of Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant requested \$38,831.70 in compensatory damages and \$433,325.59 in punitive damages.

Respondent Tamashiro requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning respondent Tamashiro who did not file a Statement of Answer nor a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.

2. The panel found that respondent Tamashiro was an associated person of an NASD member at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Tamashiro pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondent Tamashiro was required to file with NASD Regulation a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent Tamashiro, pursuant to Rule 10314(a) of the Code.

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 NASD Regulation.

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. Respondent Kenneth Tamashiro be and hereby is liable and shall pay to claimant JoAnn T. Lumsden \$8,000.00 in compensatory damages.
2. Respondent Kenneth Tamashiro be and hereby is liable and shall pay to claimant JoAnn T. Lumsden simple interest at the legal rate in North Carolina from April 23, 1997 to the date of payment of the award.
3. The parties shall bear their respective costs and attorney's fees.
4. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

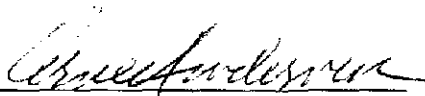
| | |
|-----------------------------------|--------------|
| Two Sessions x \$750.00 | = \$1,500.00 |
| Minus claimant's \$750.00 deposit | = \$ 750.00 |
| total outstanding | = \$ 750.00 |

Claimant JoAnn Lumsden be and hereby is liable for the sum of \$750.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation. Therefore, nothing is owed to the NASD by the Claimant.

Respondent Kenneth Tamashiro be and hereby liable for the sum of \$750.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation \$750.00 in satisfaction of outstanding forum fees.

ARBITRATORS' SIGNATURES

I, Arne Hovdesven, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Arne Hovdesven, Esq.
Public Chairperson

I, David Brooks Westwater, Jr., Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

David Brooks Westwater, Jr., Esq.
Public Panelist

I, Thomas C. Borthwick, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Thomas C. Borthwick
Industry Panelist

Date of Decision: June 13, 1997

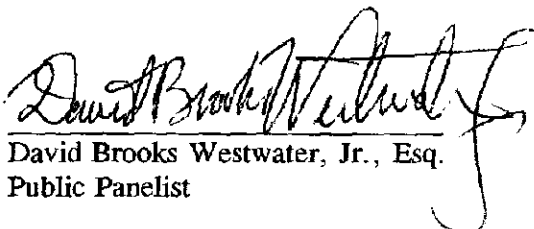
Respondent Kenneth Tamashiro be and hereby liable for the sum of \$750.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation \$750.00 in satisfaction of outstanding forum fees.

ARBITRATORS' SIGNATURES

I, Arne Hovdesven, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Arne Hovdesven, Esq.
Public Chairperson

I, David Brooks Westwater, Jr., Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



David Brooks Westwater, Jr., Esq.
Public Panelist

I, Thomas C. Borthwick, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Thomas C. Borthwick
Industry Panelist

Date of Decision: June 13, 1997

Respondent Kenneth Tamashiro be and hereby liable for the sum of \$750.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent shall pay to NASD Regulation \$750.00 in satisfaction of outstanding forum fees.

ARBITRATORS' SIGNATURES


I, Arne Hovdesven, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Arne Hovdesven, Esq.
Public Chairperson

I, David Brooks Westwater, Jr., Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

David Brooks Westwater, Jr., Esq.
Public Panelist

I, Thomas C. Borthwick, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Thomas C. Borthwick
Industry Panelist

Date of Decision: June 13, 1997