

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Daniel W. DeLuca

96-04165

Name of Respondents

Prudential Securities Inc
Michael Appelbaum

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 18, 1996, claimant Daniel DeLuca ("claimant"), who appeared Pro Se, alleged that respondents Prudential Securities, Inc. ("PSI") and Michael Appelbaum ("Appelbaum") failed to disclose facts about the stock they were recommending to him. Claimant further alleged that he opened an account at PSI with Terry Zickerman ("Zickerman"). Claimant also alleged that he signed on with Zickerman to invest in the Dow Strategy, because he was a relatively conservative investor. Claimant asserted that on or about June 1995 he was introduced to Appelbaum as Zickerman's partner and that he and Zickerman would be handling his account. Claimant further asserted that he was told that Zickerman would be working to promote the Dow Strategy for PSI. Claimant also asserted that Zickerman was leaving PSI to work for Gruntal and could not disclose the same to him.

Claimant contended that Appelbaum recommended that he invest in a retail stock called Best Products ("Best"). Claimant further contended that Appelbaum told him that Best had a lot of growth potential. Claimant also contended that he told Appelbaum that he was looking at companies like Kmart and Quaker Oats, but Appelbaum told him the Best had more upside potential and was a better alternative. Claimant alleged that a few days later he received the confirmation and noticed that PSI was the market maker of Best. Claimant further alleged that he did not know what that meant so he called Appelbaum. Claimant also alleged that Appelbaum told him that it did not mean anything significant, but by law they must advise him of the same. Claimant asserted that he learned that PSI controlled the stock and affected the price of the stock. Claimant further asserted that he also learned that Best had filed Bankruptcy and had reorganized, which Appelbaum never disclosed to him before he purchased the stock.

Claimant also asserted that Appelbaum sold him the stock because PSI was offering incentives to its representatives to sell the stock. Claimant contended that PSI artificially pushed the price of Best up, so that it could make a handsome profit for itself and its preferred customers. Claimant further contended that he was misled and was improperly advised in this transaction.

Respondent Appelbaum through his representative and counsel David Crystal II of the law firm Gilbride, Tusa, Last & Spellane L.L.C. maintained that claimant's investment objectives were speculation, safety

of principal and long-term growth. Respondent Appelbaum further maintained that when he inherited the account he contacted claimant and reaffirmed his investment objectives. Respondent Appelbaum also maintained that in July 1995 he recommended to claimant Best. Respondent Appelbaum contended that Best was a major turnaround situation having come out of bankruptcy in 1994. Respondent Appelbaum further contended that PSI ranked Best as a "Star Group". Respondent Appelbaum also contended that claimant was sent several action advisories which detailed information on Best, including the prior bankruptcy. Respondent Appelbaum maintained that there were 15 market makers for Best, which would belie the possibility of PSI manipulating the price of the stock.

Respondent Appelbaum further maintained that at the same time he discussed Best with claimant, he had also discussed Kmart and Quaker Oats. Respondent Appelbaum also maintained that he gave claimant the benefit of the information he had on these companies. Respondent Appelbaum contended that PSI was recommending a "hold" on these companies rather than a "buy". Respondent Appelbaum further contended that he discussed all the information with claimant and that claimant made an informed decision to buy Best. Respondent Appelbaum also contended that claimant knew through the "Star Group" report, being told by him, and the confirmation that PSI was the market maker of Best.

Respondent PSI through its representative and in-house counsel Arthur Baumgartner maintained that claimant's new account form states his investment objectives as long term growth, safety of principal and speculation. Respondent PSI further maintained Appelbaum informed claimant of all the risks and potential of Best when claimant made the decision to buy 1,000 shares of Best at \$8.50 per share. Respondent PSI also maintained that claimant never objected to the trade after he received the confirmation which disclosed that PSI was the market maker. Respondent PSI contended that it is simply incredible to assume that the supposed nondisclosure of PSI's market making in any way caused claimant's loss. Respondent PSI further contended that if the alleged nondisclosure would have influenced claimant's decision to buy Best, he could have sold the stock after he received the confirmation and made a profit.

RELIEF REQUESTED

Claimant Daniel DeLuca requested (1) his initial investment of \$8,212.00; (2) an interest rate of 9% from July 17, 1995; (3) plus expenses of this proceeding.

Respondent Appelbaum requested that the claims of claimant be dismissed in their entirety. In addition, respondent Appelbaum requested that the arbitrator in his award direct the NASD to expunge this case from his record by deleting it from the Central Registration Depository ("CRD").

Respondent PSI requested that the claims of claimant be dismissed in their entirety.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Samuel Freeman, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Daniel DeLuca on September 17, 1996, by respondents PSI on October 23, 1996 and by Appelbaum on October 31, 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 claims of claimant Daniel DeLuca against respondents Michael Appelbaum and Prudential Securities, Inc. are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc. Respondents Appelbaum and PSI be and hereby are jointly and severally liable and shall pay claimant Daniel DeLuca the sum of \$75.00 as reimbursement of one-half the filing fee.

AFFIRMATION

I, **Samuel H. Freeman, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Samuel H. Freeman, Esq.

Date of Decision: March 6, 1997

Arbitrators' Signatures

John J. O'Neill, Esq.
Chairman-Industry Arbitrator

Clifford J. Friedman
Industry Arbitrator



James J. McCormack
Industry Arbitrator

Date of Decision: October 10, 1997

I, James J. McCormack, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James J. McCormack