

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

J.B. Unlimited,

Claimant,

and

No. 96-05245

Prudential Securities, Inc., Michael Digan,  
Kingston Securities Corp., and Renee Kwait Rettig,  
Respondents.

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**REPRESENTATION OF PARTIES**

Claimant, J.B. Unlimited, was represented by A. Frederick Schaffer, Esquire, located in Phoenix, Arizona.

Respondents Prudential Securities, Incorporated and Michael Digan were represented by Donald R. Littlefield, Esquire of Prudential Securities, Incorporated, located in Dallas, Texas.

Respondent Kingston Securities Corporation was represented by Robert E. Netter, Esquire of Cook, Tucker, Netter & Cloonan, P.C., located in Kingston, New York.

Respondent Renee Kwait Rettig was dismissed from this matter.

**CASE INFORMATION**

J.B. Unlimited's Statement of Claim was filed on or about November 21, 1996.

J.B. Unlimited's Submission Agreement was signed on December 12, 1996 by Charles S. Kalav, Secretary of J.B. Unlimited, Inc.

Prudential Securities, Incorporated and Michael Digan's Statement of Answer was filed on or about February 14, 1997.

Prudential Securities, Incorporated's Submission Agreement was signed on February 13, 1997 by Donald Littlefield, First V.P. & Assoc. General Counsel of Prudential Securities Inc.

Michael Digan's Submission Agreement was signed on February 19, 1997.

Kingston Securities Corporation's Statement of Answer was filed on or about January 16, 1997.

Kingston Securities Corporation's Submission Agreement was signed on January 16, 1997 by Cappy A. Foster, President of Kingston Securities Corp.

### HEARING INFORMATION

A pre-hearing conference was held on July 1, 1997 for one (1) session.

The hearing was held on August 6, 1997 for two (2) sessions in Phoenix, Arizona.

### CASE SUMMARY

Claimant, J.B. Unlimited ("Claimant"), brought this action against Prudential Securities Incorporated ("PSI"), Michael Digan ("Digan"), who is the manager of PSI's Tucson, Arizona office, and Kingston Securities Corporation ("Kingston"), which was the guarantor of forged signatures on a stock power, to recover proceeds from the sale of shares that were allegedly wrongfully converted to the original owner of the shares.

According to Claimant, its secretary, Charles Kalav ("Kalav"), ordered the sale of 100,000 shares of Universal Marketing and Entertainment, Incorporated ("UMEI") - OTC, which were sold over a period from May 1995 to June 1995 for approximately \$39,792.03, which was deposited in Claimant's account at the PSI office in Tucson, Arizona. Claimant asserted that Renee Kwait Rettig ("Rettig"), PSI's Assistant Vice President and Assistant General Counsel at all relevant times, accused Claimant and Kalav of selling stolen securities, which was proven untrue, and later accused them of with forging the signature of the original certificate owner on a stock power, which was also proven to be untrue and acknowledged by Rettig. Claimant alleged that PSI, without authorization, delivered the proceeds of the sale to the original certificate owner. Claimant asserted the following causes of action: (1) due process - failure to arbitrate dispute; (2) negligence - fraud; (3) failure to supervise; (4) breach of fiduciary duty; and (5) breach of covenant of good faith and fair dealing.

PSI and Digan denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They stated that Claimant has no cause of action and is not entitled to any damages. According to PSI and Digan, they acted reasonably when PSI was drawn into a dispute between third parties. PSI and Digan also stated that PSI was presented with a sworn statement that certain shares of stock deposited by Claimant were stolen from her. PSI and Digan contended that when she demanded the shares be returned to her, they informed Claimant of the allegations and waited a reasonable time before returning the allegedly stolen certificates to the original owner.

Kingston denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Kingston stated that at no time did any employees of Kingston knowingly or intentionally guarantee any forged signature of the original owner of the shares at issue. Kingston contended that there is no valid claim against it in that Claimant has no privity with it, contractual

or otherwise, and Kingston owes no duties or obligations to Claimant. Kingston asserted that the Statement of Claim fails to set forth any viable claim against it.

### **RELIEF REQUESTED**

Claimant, J.B. Unlimited, requested an award for: damages of \$39,792.83; pre-award interest from October 11, 1985, and post-award interest; and costs of arbitration expenses including consulting fees, expert witness fees, attorneys' fees, and other costs and damages.

Respondents Prudential Securities, Incorporated and Michael Digan requested that the claims asserted against them be dismissed in their entirety.

Respondent Kingston Securities Corporation requested that the Statement of Claim be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Pursuant to Claimant J.B. Unlimited's letter dated February 3, 1997, Respondent Renee Kwait Rettig was dismissed from this matter.

At the hearing in this matter, Claimant J.B. Unlimited, dismissed Respondent Mr. Michael Digan. The panel of arbitrators unanimously agreed that this complaint should be stricken from Michael Digan's CRD record.

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. The Statement of Claim is hereby denied in its entirety with prejudice. The arbitrators direct the NASD to strike the mention of this complaint from Michael Digan's CRD record.
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

retain the non-refundable filing fee of \$120 and shall retain as forum fees the hearing session deposit of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by J.B. Unlimited.

J.B. Unlimited is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution postponement fees of \$400.

J.B. Unlimited is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees of \$700 (= \$1,100 total forum fees - \$400 hearing session deposit).

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Prudential Securities, Incorporated.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures**

Alan R. Markizon  
Alan R. Markizon, Esquire  
Chairperson  
Public Arbitrator

/s/

August 26, 1997  
Dated:

Alan R. Markizon, Esquire  
Chairperson  
Public Arbitrator

Allan Levey  
Allan Levey  
Panelist  
Public Arbitrator

/s/

August 27, 1997  
Dated:

Allan Levey  
Panelist  
Public Arbitrator

Charles Taylor  
Charles Taylor  
Panelist  
Industry Arbitrator

/s/

September 5, 1997  
Dated: