

**AWARD****NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Nancy M. Raymond Revocable Trust

98-02970

Names of Respondents

Prudential Securities Incorporated  
John Egan

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**REPRESENTATION**

For Claimant: Albert A. Rapoport, Esq., Boca Raton, FL.

For Respondents Prudential Securities Incorporated ("Prudential") and John Egan ("Egan"):  
David D. Hartung, Esq. of Prudential Securities Incorporated Law Department, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on August 17, 1998.

Claimant's Submission Agreement signed on September 29, 1998.

Joint Statement of Answer filed by Respondents on January 4, 1999.

Respondent Prudential's Submission Agreement signed on December 30, 1998.

Respondent Egan's Submission Agreement signed on December 28, 1998.

**HEARING INFORMATION**

A telephonic pre-hearing conference which lasted one (1) session was conducted by the Arbitration Panel on May 24, 1999.

The evidentiary hearing which lasted three (3) sessions was conducted in Boca Raton, Florida on July 22 and 23, 1999.

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### **CASE SUMMARY**

Claimant alleged the following: that Claimant's account was churned; that Respondents breached their fiduciary duties; that at least 147 trades were made between November 1992 and December 1996; that many of the trades were purchases and sales of the same securities made within several days or weeks of each other; that these trades were unauthorized and were unsuitable and inappropriate for Claimant especially in light of Claimant's age; and, that the commission charges exceeded \$22,000.00 in an account with an average net worth of \$80,000.00.

Respondents alleged the following: that Claimant's account was not churned because Claimant controlled the account at all times and the turnover was nominal; that no unauthorized trading occurred because Claimant authorized or ratified each and every trade in the account; that the trading in the account was suitable for Claimant based on her financial status, investment experience, and investment objectives which were all clearly established in past and concurrent trading activity in other brokerage accounts and in verbal representations made by the Claimant and attested to by the Claimant; and, that Claimant has suffered no monetary damages as a result of the trading in the subject accounts.

### **RELIEF REQUESTED**

Claimant requested that relief be granted against the Respondents including compensatory damages of \$50,000.00, pre-judgment interest, costs, filing fees, attorneys' fees, punitive damages, and other relief the panel deemed appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all costs associated with the Respondents' defense of this matter be awarded to the Respondents.

### **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 original remains on file with NASD Regulation, Inc.

### **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:

Respondent Prudential is liable and shall pay to the Claimant the sum of \$19,200.00.

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Respondent Egan is liable and shall pay to the Claimant the sum of \$12,800.00.

Respondent Prudential is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement of Claimant's filing fee.

Claimant's requests for pre-judgment interest, costs, attorneys' fees, and punitive damages are denied.

Respondents' request that all costs associated with the Respondents' defense of this matter be awarded to the Respondents is denied.

#### **FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure ("Code"), the Arbitration Panel has assessed forum fees in the amount of \$2,000.00 (one (1) pre-hearing conference-Panel x \$500.00 plus three (3) hearing sessions x \$500.00) as follows:

Respondent Prudential is assessed the sum of \$2,000.00.

#### **OTHER FEES**

Pursuant to Rule 10332 of the Code, Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondent Prudential has paid to NASD Regulation, Inc. the member surcharge of \$1,000.00.

Pursuant to Rule 10333 of the Code, Respondent Prudential shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$600.00 for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited by Respondent Prudential in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$200.00.

Pursuant to Rule 10333 of the Code, Respondent Prudential shall pay to NASD Regulation, Inc. the hearing process fee of \$1,500.00 previously invoiced.

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

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Concurring Arbitrators' Signatures  
Name

Public/Industry

/s/

\_\_\_\_\_  
Stan West

Public

/s/

\_\_\_\_\_  
Robert J. Saex

Public

/s/

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Melinda Joy Scarvey, Esq.

Industry

Date of Decision: August 19, 1999

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Public

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Melinda Joy Scarvey, Esq.

Industry

Date of Decision: \_\_\_\_\_

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Robert J. Saex

Public

Melinda Joy Scarvey Esq.  
Melinda Joy Scarvey Esq.

Industry

Date of Decision: \_\_\_\_\_