

**Award  
NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Charles W. Zimmermann and Betty W. Zimmermann, both individually and as Trustees of the Zimmermann Family Trust dated December 2, 1991, Claimants vs. Prudential Securities Incorporated and Mark Sloan, Respondents.

Case Number: 99-01315

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

Claimants, Charles W. Zimmermann and Betty W. Zimmermann, both individually and as Trustees of the Zimmermann Family Trust dated December 2, 1991, hereinafter referred to as "Claimants": Jeffrey A. Feldman, Esq., San Francisco, California

Respondents, Prudential Securities Incorporated ("PSI") and Mark Sloan ("Sloan"), hereinafter referred to as "Respondents": Paul L. Meli, Esq. and J. Ankowitz, Esq., Law Offices of Joseph D'Elia, Huntington, New York

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 1999

Claimants' Statement of Case and Arbitration Brief filed on or about: June 12, 2000

Claimant, Charles W. Zimmermann, signed the Uniform Submission Agreement: March 15, 1999

Claimant, Betty W. Zimmermann, signed the Uniform Submission Agreement: March 15, 1999

Claimant, Charles W. Zimmermann, as Trustee of the Zimmermann Family Trust dated December 2, 1991, signed the Uniform Submission Agreement: March 12, 1999

Claimant, Betty W. Zimmermann, as Trustee of the Zimmermann Family Trust dated December 2, 1991, signed the Uniform Submission Agreement: March 12, 1999

Joint Statement of Answer filed by Respondents, PSI and Sloan, on or about: May 17, 1999

Respondents' Statement of Case filed on or about: April 28, 2000

Respondents' Arbitration Brief filed on or about: June 14, 2000

Respondent, PSI, signed the Uniform Submission Agreement: May 17, 1999

Respondent, Sloan, signed the Uniform Submission Agreement: May 17, 1999

**CASE SUMMARY**

Claimants alleged the following claims with respect to investments in *Criimi Mae, Inc.* and North Star Strategic Income Fund Class A: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Negligent Supervision as to PSI; 4) Negligence; and 5) Breach of Contract.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents alleged that at all times, they have dealt with Claimants in good faith, honestly and in a professional manner and further alleged that at all times, Respondents have acted within the requirements of the law and its obligations to the NYSE and NASD.

### **RELIEF REQUESTED**

Claimants requested an award under the First and Second Claims for Relief as follows:

1. For lost principal damages and lost return on principal damages in the approximate amount of no less than \$62,000.00;
2. For exemplary and punitive damages according to proof at the time of the arbitration hearing;
3. For costs of the arbitration herein incurred;
4. For such other and further relief as the arbitration panel may deem just and proper; and
5. For attorney's fees according to proof pursuant to California Welfare and Institutions Code Section 15,610, et seq.

Claimants requested an award under the Third, Fourth and Fifth Claims for Relief as follows:

1. For lost principal damages and lost return on principal damages in the approximate amount of no less than \$62,000.00;
2. For costs of the arbitration herein incurred; and
3. For such other and further relief as the arbitration panel may deem just and proper.

Respondents requested that Claimants' Claim be dismissed in its entirety.

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

On or about June 16, 1999, Jeffrey A. Feldman, Claimants' Counsel, advised that Charles W. Zimmermann passed away and that the above-referenced dispute should go forward as to Mrs. Zimmermann, and the trust.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel found that the Claimant, Zimmermann Family Trust dated December 2, 1991, suffered damages resulting from the conduct of Respondents, and determined that Respondents, PSI and Sloan, are jointly and severally liable for and shall pay to Claimant, Zimmermann Family Trust dated December 2, 1991, the sum of \$40,847.38, plus interest at the rate of ten percent (10%) from January 22, 1998.

2. The Panel also determined that Claimants shall recover their arbitration filing costs because of Respondents' conduct in placing Claimants in an unsuitable investment known as Criimi Mae, Inc. Accordingly, Respondents, PSI and Sloan, are jointly and severally liable for and shall pay to Claimants the sum of \$150.00 as reimbursement for Claimants' filing fee.

3. All other allegations, including the claims for exemplary and punitive damages, are dismissed.

4. The parties shall each bear all other respective costs including attorney's fees.

5. This award is in settlement of any and all claims between the parties.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$150.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$500.00	= \$500.00
Pre-hearing conference: December 6, 1999 1 session	

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: April 24, 2000 1 session	
Five (5) Hearing sessions x \$500.00	= \$2,500.00
Hearing Dates: June 19, 2000 1 session	
June 20, 2000 2 sessions	
June 21, 2000 2 sessions	
<hr/> Total Forum Fees	= \$3,300.00

1. The Panel has assessed the \$3,300.00 in forum fees jointly and severally to Respondents, PSI and Sloan.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security. The parties did not incur administrative costs.

**Fee Summary**

1. Claimants, be and hereby are solely liable for:

Initial Filing Fee	= \$150.00
Member Fees	= \$ 0.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$ 0.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$150.00
<u>Less payments</u>	= \$650.00
Balance (Refund)	= \$500.00

2. Respondent, PSI, be and hereby is solely liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$3,100.00
Forum Fees	= \$ 0.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$3,100.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

3. Respondents, PSI and Sloan, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 0.00
Forum Fees	= \$3,300.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$3,300.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$3,300.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



George King, Esq.  
Public Arbitrator, Presiding Chair

Jul 6, 2000  
Signature Date

\_\_\_\_\_  
William J. Petzel, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael Garcia  
Industry Arbitrator

Date Served:

JUL 13 2000

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

3. Respondents, PSI and Sloan, be and hereby are jointly and severally liable for:


Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 0.00
Forum Fees	= \$3,300.00
Administrative Costs	= \$ 0.00
Total Fees	= \$3,300.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$3,300.00


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Member Fees	= \$ 0.00
Forum Fees	= \$3,300.00
Administrative Costs	= \$ 0.00
Total Fees	= \$3,300.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$3,300.00

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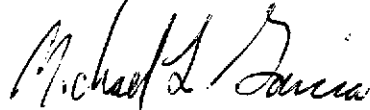
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