

**PACIFIC EXCHANGE, INC.**  
301 Pine Street  
San Francisco, CA 94104

In The Matter of the Arbitration Between:

IRAL G. HODGE, individually and as  
Trustee for the IRAL G. HODGE LIVING  
TRUST,

CLAIMANT

v.

PRUDENTIAL SECURITIES, RICK  
LABARE, AND DONALD ARINGTON,

RESPONDENTS

**PCX CASE #: 02-S033**

**ARBITRATION DECISION**

**HEARING DATES: JULY 29 & 30, 2003**

**LOCATION: SAN FRANCISCO, CA**

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant on August 26, 2002, and the Answer of Respondent(s), hereby render the following Decision pursuant to Rule 12 of the Rules of the Board of Governors of the Pacific Exchange:

**REPRESENTATION OF PARTIES**

Of Claimant:

Resolution Law Group, P.C.  
Brian L. Zagon, Esq.  
Robert Gonser, Esq.

Of Respondents

Charles LaChaussee, Esq.  
First Vice President, Associate General Counsel  
Prudential Securities Incorporated

**SUMMARY OF FACTS**

**From Claimant's Perspective:**

The Claimant is a retired widower on a fixed income who had some investment background. In 1997, Claimant opened a Prudential Security Account and transferred some assets into the account. His investment objectives were first income, and then growth with a minimum monthly payment requirement from his principal and investments with a stated low risk tolerance.

In 2000, the Claimant's broker Mr. Labare made a substantial purchase of a highly volatile, high yield fund that was unsuitable based on the Claimant's profile. Due to market fluctuations, the investment lost value jeopardizing the Claimant's financial well being.

**From Respondents Perspective:**

The Respondents' position is that the Claimant's entire statement of claim is a highly misleading document riddled with inaccuracy and half truths which, in reality, is nothing but a desperate attempt to recover losses incurred in a slumping equity market.

**From Respondents Perspective (continued):**

The Claimant, though advanced in years, is an educated, experienced investor who has maintained his mental capacity and recording keeping skills. All transactions including the purchase of the mutual funds in question were reviewed and approved by the Claimant. The Claimant aware of the investment market conditions in 2000 made all decisions, obtained the benefits from such decisions, and complained only after he allegedly suffered losses resulting from such decisions. Additionally, the purchase of these funds was consistent with the Claimant's secondary investment objective, which was growth.

**ISSUES PRESENTED**

**By Claimant:**

1. Fraud
2. Misrepresentation
3. Breach of Fiduciary Duty
4. Breach of Contract
5. Suitability Violation
6. Violation of Elder Abuse Laws
7. Entitlement to Recover Monetary Damages

**By Respondents:**

Respondents generally and specifically deny each and every substantive allegation of wrong doing contained in the state of claim and further assert that the Claimant's Prudential Securities account was at all time handled properly and in accordance with applicable rules, regulations, and laws.

**RELIEF REQUESTED**

**Claimant Requests:**

Award of the following summary of damages:

|   |                     |
|---|---------------------|
| a. Rescission of unauthorized and unsuitable investment in Seligman Communications Fund   | \$152,971.67        |
| b. Punitive damages   | \$305,942.00        |
| c. Costs<br>( <i>\$1,407.52 for case filing fees, communications expenses, and reproduction expenses; \$3,000.00 for court reporter</i> ) | \$4,407.52          |
| d. Expert Costs (estimated)   | \$1,500.00*         |
| Subtotal  | \$464,820.52        |
| e. Attorney's Fees (38% of recovery)  | \$284,890.00        |
| <b>Total Damage Claim</b>   | <b>\$749,710.52</b> |

\*NOTE: Claimant at hearing informed arbitrators that actual expert costs were \$7,500.00 but no supporting documents were submitted.

**Respondents Request:**

Dismissal of the Claimant's claims in their entirety and Prudential Securities request that costs be awarded in Prudential Securities' favor. Additionally, Mr. Arlington and Mr. Labare request the Arbitration Panel recommend the expungement of all reference to this matter from their registration records maintained by the NASD Central Registration Depository (CRD).

**FINDINGS AND DECISION**

After considering the argument and evidence of both the Claimant and Respondents in this matter, the undersigned Arbitrators make the following findings:

1. Claimant was sold an unsuitable fund based on his Prudential Securities' profile.
2. Claimant's fund was too volatile for his age and the amount invested was a significant portion of his assets.
3. Claimant did not receive a complete prospectus of the high-risk fund at the time of sale, which is required by regulation.
4. Claimant tried to get a reasonable response to his concerns from Prudential Securities and Mr. LaBare after writing several letters but was unsuccessful.
5. Prudential Securities, at the time of these transactions, had inadequate internal procedures for review of purchases and exchanges of this type, which would require management's review.
6. Prudential Securities provided no evidence of any special consideration regarding handling the accounts of an elderly, deaf client in his 90's.

**A. Decision:**

After considering the argument and evidence of both the Claimant and Respondents in this matter, the undersigned Arbitrators make the following determination and decision of the issues presented, as set forth below:

**B. Award:****1. Monetary Damages**

The sum of \$160,000.00 is awarded to the Claimant, Iral G. Hodge, individually and as Trustee for the Iral G. Hodge Living Trust.

**2. Punitive Damages**

No punitive damages are awarded to the Claimant.

**3. Costs**

- A. Both parties shall be responsible for one half (1/2) of all Pacific Exchange case filing fees and arbitration hearing costs.

- B. Both parties shall be responsible for their own individual hearing expenses, including, but not limited to, expert witness fees, court reporter fees, communication expenses, and the expenses associated with the reproduction of documents, etc.

4. Attorney Fees

Both parties shall be responsible for their own attorney fees.

5. Other

This is a judgment against the Broker, Rick Labare and Prudential Securities and does not include Donald Arington. Based upon the review of the facts, we the panel order and/or recommend the expungement of all reference to this matter from Donald Arington's registration records maintained by the NASD Central Registration Depository (CRD).


C. Other Determinations

- |   |   |  |
|---|---|--|
| 1. Respondent shall reimburse Claimant's non-refundable filing fee  | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| 2. Respondent shall reimburse Claimant's hearing session deposit  | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| 3. Parties shall bear their own costs of arbitration  | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |
| 4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation Federal securities laws? | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |

D. Forum Fees:

To be determined by the Pacific Exchange Arbitration Administration.

Dated: AUG 4 / 03

  
Peter Kassel, Chair

Dated: Aug 8 / 03

  
Michelle Brant, Public Arbitrator

Dated: Aug 13, 2003

  
Deborah Bernat, Industry Arbitrator