

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

R and B Enterprises

90-00400

Name of Respondent

Prudential-Bache Securities Inc. and  
Prudential-Bache Agriculture Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about February 28, 1990, R & B Enterprises ("Claimant") alleged that Prudential-Bache Securities Inc. and Prudential-Bache Agriculture Inc. ("Respondents") violated the Securities and Exchange Act Sec. 77 as et seq. and Rule 10b-5 promulgated thereunder; committed common law fraud; negligent misrepresentation; breach of fiduciary duty; and fraudulent concealment in connection with the offer and sale of interests in Spendthrift Thoroughbred Breeding No. 1 a tax sheltered limited partnership.

In their answer filed with the NASD on or about April 2, 1990, Respondents alleged that the claim was time barred by various statutes of limitations; that Respondents performed adequate due diligence prior to the offering of the subject limited partnership; and denied that false statements were made in connection with the offering; and that the risks of this investment were fully and adequately disclosed to the claimants prior to their purchase.

RELIEF REQUESTED

Claimant requested an award in the amount of \$41,823.00 in compensatory damages and \$100,000.00 in punitive damages. Claimants request for attorneys fees was withdrawn at the hearing.

Respondents requested that the Statement of Claim be dismissed in its entirety.

### PROCEDURAL SUMMARY

Claimant's counsel filed an amended Statement of Claim after the panel was appointed. The panel considered the purported amendment at the hearing on October 18, 1990. The panel determined pursuant to Section 39(b) of the NASD Code of Arbitration Procedure to allow the amendment. Thereafter, counsel for Respondents moved for additional discovery on the basis of the amended claim. The panel granted the request after hearing the arguments presented by the parties. The claimants counsel then withdrew the amended claim and the panel proceeded to hear the matter as originally submitted.

During the break between the October 18, 1990 and November 28, 1990 sessions the panel viewed videotape testimony of Sandra Clark, a witness for claimant.

During the hearing claimant's counsel also withdrew the request for attorneys fees.

At the close of claimant's case in chief, Respondent made a motion to dismiss based upon the statute of limitations. After hearing oral argument and reviewing memoranda submitted by the parties the panel denied the motion and Respondents presented their case in chief.

The parties have agreed that the Award in this matter may be executed in counterpart copies and to receive conformed copies of the Award while the original signatures remain on file with the NASD.

### AWARD

On Thursday, October 18, 1990, Wednesday, November 28, 1990 and Thursday, November 29, 1990 in New Orleans, Louisiana during a hearing lasting a total of eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 31, 1990 by Barry L. Radell and Edward J. Boos on behalf of Claimant R and B Enterprises. Respondents Prudential-Bache Securities, Inc. and Prudential-Bache Agriculture, Inc. did not file Uniform Submission Agreements but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared at the hearing and having presented their defense are bound by the determination of the panel on all issues presented.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain \$200.00 of the \$400.00 previously deposited with the NASD by the Claimant as the non-refundable filing fee. Respondents shall pay to the NASD the sum of \$6,000.00 as forum fees.

Dec. 3, 1990

Daniel Eugene Bivins, III  
Daniel Eugene Bivins, III  
Presiding Chair


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Fred Snyder

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Lee Murphy, Esq.  
Industry Panelist

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain \$200.00 of the \$400.00 previously deposited with the NASD by the Claimant as the refundable filing fee. Respondents shall pay to the NASD \$6,000.00 as forum fees.

National Association of  
Securities Dealers, Inc.  
Bulfinch National Plaza  
Chicago, IL 60602  
(312) 899-4440

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Daniel Eugene Bivins, III  
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