

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant(s)

Robert L. Mark
K. Virginia Mark

90-01852

Name of Respondent(s)

Prudential-Bache Securities Inc.
Marty Harari

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 29, 1990, Robert L. Mark and K. Virginia Mark (herein after "Claimants") allege that Prudential-Bache Securities, Inc. and Marty Harari (herein after "Respondents") breached their fiduciary duty to the Claimants by recommending unsuitable investments to the Claimants and securities that are contrary to the Claimants' investment objectives. Claimants assert that a breach of such duty is a violation of: 1) the NASD Rules of Fair Practice; 2) Rule 10b of the Securities Exchange Act of 1934; and 3) the anti-fraud Rule 10b-5.

In an answer filed with the NASD on or about October 12, 1990, Respondents denied all allegations of wrong doing in the Statement of Claim and asserted that the Claimants were recommended investments which were suitable in light of the Claimants' expressed investment objectives.

PROCEDURAL SUMMARY

Claimants moved to preclude the Respondents' answer pursuant to Section 25(b)(2) of the NASD Code of Arbitration Procedure which was denied by the Arbitration Panel.

RELIEF REQUESTED

Claimants request that the Respondents repurchase the unsuitable securities, less distributions received plus interest at 10% per annum, plus attorney's fees and costs of arbitration. In addition, Claimants seek damages for fraud in connection with the unsuitable recommendations in the amount of \$92,000.00.

Respondents request a dismissal of the Claimants' claim and an award of the costs they incurred in defending this claim.

AWARD

On March 8, 1991 in Dallas, Texas during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 22, 1990 by Claimants Robert J. Mark and K. Virginia Mark on October 10, 1990 by Stephen J. Shine on behalf of Respondents Prudential-Bache Securities, Inc. and Marty Harari.

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 the NASD.

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. Respondents Prudential-Bache Securities, Inc. and Marty Harari are liable, jointly and severally, and shall pay to Claimants Robert L. and K. Virginia Mark damages in the amount of Six Thousand Two Hundred Seventy Six Dollars (\$6,276.00);
2. Respondents Prudential-Bache Securities, Inc. and Marty Harari, jointly and severally, shall repurchase 15 units of Prudential Acquisition Fund II from Claimants for the price of Seventeen Thousand Nine Hundred Fifty Five Dollars (\$17,955.00);
3. Respondents Prudential-Bache Securities, Inc. and Marty Harari, jointly and severally, shall repurchase 8 units of Fogelman Mortgage L.P.I. from Claimants for the price of Eight Thousand Eight Hundred Sixteen Dollars (\$8,816.00); and
4. The parties shall each bear all other costs, attorneys' fees and expenses incurred by them in connection with this proceeding.

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimants. Respondents Prudential-Bache Securities, Inc. and Marty Harari are hereby assessed, jointly and severally, Forum Fees in the amount of \$500.00.

Dated:

3/8/91

3/8/91

3/8/91

/s/ James P. Broome
Presiding Chair

/s/ Anne H. Luckin

/s/ Ned E. Young
Industry Arbitrator