

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

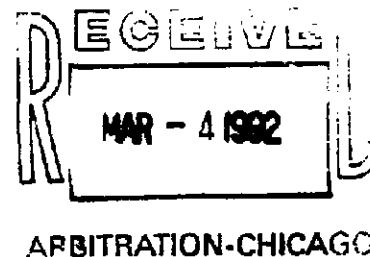
Name of Claimants

Albert & Alfild Buchmann

90-02246

Name of Respondents

Prudential-Bache Securities Inc. and
Bruce Scott



REPRESENTATION

For Claimant: Frank Lewis, Esq. of Langerman, Begam, Lewis & Marks, Phoenix, Arizona.

For Respondents: Jesse B. Simpson, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

Statement of Claim filed: August 15, 1990.

Claimant's Submission Agreement signed on: July 27, 1990.

Joint Statement of Answer filed by Respondents, Prudential Bache Securities, Inc. and Bruce Scott on: March 6, 1991.

Respondent, Prudential-Bache Securities, Inc.'s Submission Agreement signed on: March 1, 1991 by Richard Dziedziula, First Vice President.

Respondent, Bruce Scott did not execute and file a Submission Agreement with the NASD Arbitration Department.

HEARING INFORMATION

Hearing Dates/Sessions: January 6, 1991 for two (2) sessions.
January 7, 1991 for two (2) sessions.
January 8, 1991 for three (3) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimants, Albert W. and Alfhild E. Buchmann ("Claimants") alleged that they deposited \$200,000.00 with Respondent's Prudential-Bache Securities, Inc. ("Prudential") and Bruce Scott ("Scott") with the instructions that their investment objectives were safety of principal with a reasonable return. Claimants allegedly informed Scott and Prudential that they were inexperienced investors and did not want to take any risks with their principal. Claimants alleged that despite their instructions to handle the account in such a way as to provide safety of principal and reasonable return, Prudential and Scott placed Claimants in speculative and unsuitable investments and caused the Claimants to suffer substantial losses. Claimants alleged that the losses could have been avoided had their specific instructions been followed. Claimants alleged that Prudential violated its fiduciary duty to Claimants to supervise the activities of Scott and not allow unsuitable securities to be placed in Claimants' account.

Claimants alleged that Prudential and Scott misrepresented the nature and quality of various investments placed in Claimants' account. Claimants alleged that their monies were invested in a "junk bond fund" and omitted to disclose to Claimants the risks inherent in this unsuitable investment. Claimants alleged that their monies were placed into an illiquid limited partnership which was alleged to be unsuitable and of questionable quality. Claimants also alleged that Prudential failed to perform its due diligence duties in connection with its underwriting function in regard to VMS Mortgage Investors L.P. III (and possibly other securities) to the detriment of Claimants.

The conduct alleged above was said to be violative of the Federal Racketeering Statute, the Arizona Racketeering Statute, the Arizona Securities Act, the Arizona Consumer Fraud Statute and Section 10(b) of the Securities Exchange Act of 1934.

Prudential and Scott denied liability to the Claimants and asserted that the investments were never guaranteed. Prudential and Scott did admit that the Claimants suffered losses in their securities account due to market factors. Prudential and Scott alleged that the recommendations made by Scott were based upon the Claimants net worth information of approximately \$700,000.00. Prudential and Scott alleged that Claimants received prospectuses for all investments they made and the prospectuses fully explained the risks attendant to the investments. Prudential and Scott also alleged that the decision to purchase the investments of which they complain and the decision to sell them was entirely the Claimants. Prudential and Scott asserted that Claimants indicated to Scott that they understood the risks of the market and the risks of the specific investments they made.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount prior to trebling, interest and attorney's fees of approximately \$150,000.00. Claimants requested exemplary damages, treble damages, attorney's fees and costs pursuant to the applicable laws and statutes.

Prudential and Scott requested dismissal of the claim in its entirety with prejudice.

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. The Claimants did not agree to receive a conformed copy of the Award and requested that they be provided with copies of the arbitrator's signatures on the Award.

Although Scott failed to provide the NASD with an executed Submission Agreement, the arbitrators determined that he was required to submit to arbitration Pursuant to Section 12 of the NASD Code of Arbitration Procedure (NASD Code) and accordingly, Scott will be bound by the panel's determination on all issues submitted.

The panel considered an oral motion to bar Respondents from asserting the defense that the investments were suitable on the basis that the defense was not plead in the Answer. The panel denied the motion.

MAJORITY AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and Pursuant to Section 41 of the NASD Code, a majority of the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted against Prudential and Scott by Claimants shall be and are hereby denied and dismissed in their entirety; and,
2. The parties shall each bear their own expenses, costs and attorney's fees incurred in this matter.

DISSENT

1. Arbitrator, Peter Kay concurs in part with the majority, but would award damages to Claimants for the purchase of VMS Mortgage Investors L.P. III.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The NASD shall retain the \$250.00 non-refundable filing fee and the \$750.00 hearing session deposit previously paid to the NASD by the Claimants. Prudential and Scott are jointly and severally assessed and shall pay to the NASD the sum of \$2625.00 as additional Forum Fees. Claimants are assessed and shall pay to the NASD \$1875.00 as additional Forum Fees.

Forum Fees were assessed on the basis of \$750.00 per hearing session.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Victor Wright, Esq.
Presiding Chairperson/Public Arbitrator

Dated

Louise Wakem
Louise Wakem
Panelist/Public Arbitrator

2/23/92
Dated

Dissenting Arbitrator's Signature
Name

Peter Kay
Panelist/Industry Arbitrator

Dated

Date of Award: January 8, 1992

Date Award Served by the NASD: _____

40-2246

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Victor Wright

Victor Wright, Esq.

Presiding Chairperson/Public Arbitrator

2/22/92
Dated

Louise Waken

Panelist/Public Arbitrator

Dated

Dissenting Arbitrator's Signature

Name

Peter Kay

Panelist/Industry Arbitrator

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Dated

Louise Waken
Panelist/Public Arbitrator

Dated

Dissenting Arbitrator's Signature
Name

Peter Kay
Panelist/Industry Arbitrator

Feb. 2, 1992
Dated

Date of Award: January 8, 1992

Date Award Served by the NASD: _____