

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elizabeth B. Sutphin

90-02662

Name of Respondent

Prudential-Bache Securities Inc.

REPRESENTATION

Claimant was represented by Richard McManus, Esq., Denver, Colorado.

Respondent was represented by Herbert J. Marek, Esq. of Prudential Securities, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about September 25, 1990.

Claimant's Submission Agreement signed on September 18, 1990.

Statement of Answer filed by Respondent, Prudential Securities, Inc. on or about April 30, 1991.

HEARING INFORMATION

The hearing was held on Wednesday, October 30, 1991 and Thursday, October 31, 1991 in Denver, Colorado lasting a total of four sessions.

CASE SUMMARY

Claimant, Elizabeth Sutphin, alleged that Prudential Securities, Inc. ("Prudential") engaged in fraudulent conduct, breach of contract, violated state and federal securities laws, made misrepresentations in connection with the sale of limited partnership interests and made unsuitable recommendations. Claimant specifically alleged that she was a recently divorced woman, unemployed and without investment skills. Claimant stated that she was induced to purchase units of Pru-Bache Polaris Aircraft LP2D, Polaris Aircraft Income Fund I, Pru-Bache Energy Income Series IIP7 and American Insured Mortgages.

Respondent stated that the transactions were authorized by the Claimant, that the Claimant was consistently and fully apprised of the performance and benefits of her investments, the Claimant understood the risks and benefits

of the investments, and the investments were consistent with her investment objectives. Respondent also asserted the following affirmative defenses: the claim fails to state a claim for which relief may be granted, the doctrines of ratification, waiver, estoppel, laches, assumption of the risk, comparative negligence, and failure to mitigate.

#### RELIEF REQUESTED

Claimant requested an award of approximately \$200,000.00 in compensatory damages, \$200,000.00 in punitive damages, damages in the approximate amount of and not less than \$100,000.00 for emotional distress, interest, attorney's fees, costs and expert witness fees.

Respondent requested that the Statement of Claim be denied in its entirety with prejudice.

#### OTHER ISSUES CONSIDERED & DECIDED

Respondent Prudential Securities, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and presented testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with the NASD.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the Claimant Elizabeth Sutphin the sum of \$75,000.00 as compensatory damages.
2. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the Claimant Elizabeth Sutphin the sum of \$9,000.00 as attorney's fees and costs. In making this award of attorney's fees and costs the panel has considered the caselaw cited in the briefs submitted on behalf of both parties and in particular the case of Pyle v Securities, U.S.A., Inc.
3. No punitive damages are awarded herein.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant and Claimant shall pay to the NASD the sum of \$750.00 as additional forum fees. Respondent shall pay to the NASD the sum of \$1,500.00 as forum fees. Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

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

Concurring Arbitrators' Signatures

Dated:

1-16-92

  
Carol J. Zamperini  
Presiding Chair  
Public Arbitrator

William H. Long, Esq.  
Public Arbitrator

Jeffrey A. Schaeffer  
Industry Arbitrator

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Dated:

1-13-92

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