



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David L. Burka, Trustee et al...  
Robert A. Burka, Trustee et al...  
Fred Burka, Trustee et al...

vs.

Name of Respondents

Prudential Securities Inc  
David H. Marx

Arbitration

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

Case #  
90-03532

REPRESENTATION

For Claimant: Jeffrey P. Bloom, Esq of Metzger, Gordon, Scully & Mortimer.

For Respondent: David L. Becker, Esq., in-house counsel.

CASE INFORMATION

Statement of Claim filed: December 14, 1990.

David L. Burka signed Submission Agreement as Trustee on: December 4, 1990.

Fred Burka signed Submission Agreement as Trustee on: January 25, 1991.

Robert A. Burka signed Submission Agreement as Trustee on: January 22, 1991.

Joint Statement of Answer filed on: May 01, 1991.

Prudential-Bache Securities, Inc. signed Submission Agreement on: April 30, 1991.

David H. Marx signed Submission Agreement on: April 25, 1991.

HEARING INFORMATION

Hearing Dates and Hearing Sessions: August 29, 1991 - Two Sessions.  
August 30, 1991 - One Session.

Hearing Location: Washington, District of Columbia.

CASE SUMMARY

Claimants, David L. Burka, Robert A. Burka and Fred Burka, Trustees for the

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Scott R. Burka Trust, Jeffrey C. Burka Trust and Julie B. Burka Trust, commenced this action and allege that Respondent, David H. Marx, directed the trust funds into securities which were unsuitable and inappropriate for the trusts, in light of the trusts' investment objectives of a mixture of income and capital appreciation on a conservative basis and background. Claimants also allege that Marx failed to disclose the speculative or high risk nature of the investments which were in low grade bonds, Dr. Pepper/Seven-Up and Allied Stores bonds. Claimants contend that Respondents' actions constituted a violation of the NASD Rules of Fair Practice, the rules of the New York Stock Exchange, Rule 10b-5 and the Maryland Blue Sky laws, breach of their fiduciary duties and common law fraud. Claimants also contend that the Respondent firm is liable for failing to adequately supervise Marx and under the theory of respondeat superior.

Respondents, Prudential Bache Securities, Inc. (now known as Prudential Securities Incorporated) and David H. Marx, contend that the transaction in the accounts were consistent with Claimants' objectives and express desires of the trustees. Respondents further contend that the purchase of Allied Stores bonds was the idea of Mark Burka, the brother of David and Robert Burka and who is a financial analyst. Respondents argue that the prior to these trades the trustees purchased the same bonds in other accounts. Respondents also contend that the trusts sold these bonds at a profit of \$9,000.00. Respondents assert five affirmative defenses.

#### RELIEF REQUESTED

Claimants request that the Panel award them \$150,000.00 in compensatory damages, \$50,000.00 in punitive damages against Marx.

Respondents request that the Panel dismiss the claim in its entirety.

#### AWARD

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

1. All claims asserted by the Claimants against Respondents are hereby denied.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any deposits previously made by the parties will be applied to the amounts assessed.

1. The NASD has received and shall retain \$200.00 non-refundable filing fee previously paid by the Claimants;
2. The NASD has received and shall retain the \$750.00 hearing session deposit previously paid by the Claimants;
3. Claimants are assessed a non-refundable filing fee of \$200.00;
4. Forum fees in the amount of \$2,250.00 for three (3) hearing sessions at \$750.00 per session have been assessed and shall be borne equally by the parties;
5. Therefore, the total amount remaining due from the Claimants is \$375.00;
6. The total amount due the NASD by Respondents is \$1,125.00.

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

ARBITRATION PANEL

Lawrence E. Dube, Jr., Esq.	-	Chairperson/Public
Marshall Passman	-	Public
Bonnie Wachtel, Esq.	-	Industry

Concurring Arbitrator's Signature

/s/  
Lawrence E. Dube, Jr.

/s/  
Marshall Passman

/s/  
Bonnie Wachtel, Esq.

Dated by the NASD: September 27, 1991