

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Eye Surgery Associates, Ltd. et al...
Maria & Kathy Fournier
John & Harry Fournier

90-03617

Name of Respondents

Prudential-Bache Securities Inc.
Robert Skipton

REPRESENTATION OF PARTIES

Claimants were represented by Howard J. Stain, Esq. of Holleb & Coff, Chicago, Illinois.

Respondents were represented by William A. Healy, Esq. of Prudential Securities, Inc., New York, New York and William Tusting, Esq. of Prudential Securities, Inc., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about December 26, 1990.

Claimant Eye Surgery Associates, Ltd. Pension Plan and Trust's Submission Agreement signed on March 4, 1991 by John H. Fournier, M.D. Claimant Maria Fournier's Submission Agreement signed on December 3, 1990. Claimant Kathy Fournier's Submission Agreement signed on December 3, 1990. Claimant John Fournier's Submission Agreement signed on December 3, 1990. Claimant Harry Fournier's Submission Agreement signed on December 3, 1990. Claimant Eye Surgery Associates, Ltd. Retirement Plan's Submission Agreement signed on December 3, 1990 by John Fournier, Plan Administrator.

Statement of Answer filed by Respondents Prudential Securities, Inc. and Robert Skipton on or about July 9, 1991.

Respondent Prudential Securities, Inc.'s Submission Agreement signed on July 8, 1991 by Kenneth Meister. Respondent Robert Skipton's Submission Agreement signed on July 2, 1991.

HEARING INFORMATION

The hearing was held on Thursday, February 20, 1992 for two (2) sessions and Friday, February 21, 1992 for two (2) sessions in Chicago, Illinois for a

total of four (4) sessions.

CASE SUMMARY

Claimants alleged that Robert Skipton made misrepresentations regarding investments in Putnam GMA Plus Trust, Putnam High Income Government Trust Fund, Prudential-Eache Government Plus Fund, and MPS Government Securities High Yield Trust. Claimants specifically alleged that Mr. Skipton urged them to sell their GMAs and purchase the funds listed above by stating that the funds were as safe as owning the GMAs. Claimants further alleged that Mr. Skipton did not advise them of the decline in value of the funds.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant's account were directed and controlled by Dr. John Fournier and that Dr. Fournier was a sophisticated investor. Respondent further stated that Dr. Fournier understood the nature of the funds in question.

RELIEF REQUESTED

Claimant Eye Surgery Associates, Ltd. Pension Plan and Trust requested an award in the amount of \$150,000.00 plus interest or in the alternative rescission of all transactions, and punitive damages. Claimants John H. and Harry J. Fournier, and Maria and Kathy Fournier requested an award in the amount of \$40,000.00 plus interest or in the alternative rescission of all transactions, and punitive damages.

Respondents requested that the claims be dismissed and that costs be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

At the commencement of the hearing of this matter the Claimants advised the panel that they wished to withdraw without prejudice Count Two of the Statement of Claim. Respondents argued that the withdrawal should be with prejudice. After considering the arguments of the parties, the panel allowed the withdrawal of Count Two of the Statement of Claim without prejudice. Count Two of the Statement of Claim concerned the joint accounts of John H. and Harry J. Fournier, and Maria and Kathy Fournier.

Respondents asserted a Motion to Dismiss the claims asserted in the Statement of claim. The motion was based upon the statute of limitations. After hearing the arguments presented by all parties, the panel denied the Motion to Dismiss. Respondent was given leave to reassert the Motion at a later time prior to the closing of the hearing.

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, 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 Eye Surgery Associates, Ltd. Pension Plan and Trust the sum of \$50,000.00.
2. Respondent Robert Skipton shall be and hereby is liable for and shall pay to the Claimant Eye Surgery Associates, Ltd. Pension Plan and Trust the sum of \$25,000.00.
3. No interest is awarded on the above stated sum.
4. No punitive damages are awarded herein.
5. 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 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain/refused the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$750.00 and Respondent Prudential Securities, Inc. shall pay to the NASD the sum of \$1,500.00 as additional forum fees. Prudential Securities, Inc. shall also pay to the NASD the sum of \$750.00 as a postponement fee.

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.

Dated:

2/21/92

2/21/92

2-21-92

Joseph O. Kostner, Esq.
Joseph O. Kostner, Esq.
Presiding Chair
Public Arbitrator

John A. Wilkins
John A. Wilkins
Public Arbitrator

Frederic M. Rizzo
Frederic M. Rizzo
Industry Arbitrator