

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Flanagan/Rhynard/Link

91-00001

Name of Respondent

Prudential-Bache Securities Inc.

12-6-92

CHICAGO

REPRESENTATION

For Claimants Robert Flanagan, Richard Rhynard, and William Link: Stuart C. Goldberg, Esq. of Danbury, Connecticut.

For Respondent Prudential-Bache Securities, Inc.: Patricia Roy, Esq. and Jeff Anderson, Esq. of Prudential-Bache Securities, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed January 2, 1991.

Amended Statement of Claim filed March 6, 1991.

Claimant's Submission Agreement signed on December 21, 1990.

Statement of Answer filed by Respondent, Prudential-Bache Securities, Inc. on May 24, 1991.

Respondent, Prudential-Bache Securities, Inc.'s Submission Agreement signed on May 23, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: December 17, 1991 for two (2) sessions  
December 18, 1991 for two (2) sessions  
February 24, 1992 for two (2) sessions  
February 25, 1992 for two (2) sessions  
February 26, 1992 for one (1) session

Hearing Location: Oklahoma City, Oklahoma.

### CASE SUMMARY

Robert Flanagan, Richard Rhynard, and William Link (collectively "Claimants") alleged that they opened individual retirement accounts with Prudential-Bache Securities, Inc. ("Respondent"). Claimants alleged that Respondent purchased limited partnerships and high income/risk funds for the IRAs which Claimants alleged to be unsuitable for their particular investment objective. Claimants further alleged that Respondent is also liable for misstatements and omissions, violation of RICO, common law fraud, negligence, breach of contract, and breach of fiduciary duty.

Respondent alleged that all the investments in the claimant's accounts were suitable at the time the investment recommendations were made. Respondent also alleged that the suitability claims are time barred. Respondent further alleged that no misrepresentations or omissions were made to the Claimants.

### RELIEF REQUESTED

Claimants requested \$623,268.06 as compensatory damages for the unsuitable recommendations, \$623,268.06 as compensatory damages for misstatements and omissions, \$1,869,804.18 as treble damages for securities fraud, attorney's fees and costs, \$5,297,778.51 and \$1,869,804.18 as punitive damages for common law fraud, plus pre-judgment interest and for such other and further relief as the arbitrators may deem just, fair, reasonable and in the interests of justice.

Respondent requested that the claim should be dismissed in its entirety, and that respondent be awarded cost of having to defend this frivolous action.

### OTHER ISSUES CONSIDERED AND 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondent filed a motion with the Director of Arbitration to sever the Claimant's claims. The Director instructed the Respondent to direct its motion to the panel. The panel subsequently reviewed and considered the motion and the response. The panel overruled the motion.

### 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. Independent Prudential-Bache Securities, Inc. shall be and hereby is liable for and shall pay compensatory damages to each of the Claimants as follows:

William Link: Six Hundred Forty Three Thousand Three Hundred Eight Dollars and Eighty Three Cents (\$643,368.83);

Richard Hyman: Ten Hundred Thousand Seven Hundred Forty Four Dollars and Eighty Nine Cents (\$100,744.89);

Robert Flanagan: One Hundred Thirty Eight Thousand One Hundred Ninety Three Dollars and Thirty One Cents (\$138,193.31)

2. The Claimant's claim for punitive damages is denied;

3. The Claimant's claim for treble damages is denied;

4. Each party shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated herein;

#### FORUM FEES

Pursuant to Section 42e of the Code of Arbitration Procedure, the following Forum Fees are assessed:

9 sessions @ \$750 = \$6750 minus hearing session deposit of \$750 = net \$6000 due.

Forum Fees Assessed Against Independent Prudential-Bache Securities, Inc.

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

By The Arbitration Panel:

Date:

  
Larry Pittman, Esq.  
Public Arbitrator, Chairperson

April 2, 1992

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William L. Connelley  
Public Arbitrator

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Ira W. Feinstein  
Industry Arbitrator

1. Respondent Prudential-Bache Securities, Inc. shall be and hereby is liable for and shall pay compensatory damages to each of the Claimants as follows:

William Link: Six Hundred Forty Three Thousand Three Hundred Eight Dollars and Eighty Three Cents (\$643,308.83);

Richard Reynolds: Two Hundred Thousand Seven Hundred Forty Four Dollars and Eighty Nine Cents (\$200,744.89);

Robert Flanagan: One Hundred Thirty Eight Thousand One Hundred Ninety Three Dollars and Thirty One Cents (\$138,193.31)

2. The Claimant's claim for punitive damages is denied;

3. The Claimant's claim for treble damages is denied;

4. Each party shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated herein;

### **FEES**

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

3 sessions X \$750 = \$2250 minus hearing session deposit of \$750 = net \$1500 due.

Forum Fees Assessed Against Respondent Prudential-Bache Securities, Inc.

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

by The Arbitration Panel:

Dated: \_\_\_\_\_

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Lester Fetter, Esq.  
Public Arbitrator, Chairperson

*Walter L. Cornelius*  
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Walter L. Cornelius  
Public Arbitrator

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Don W. Fainton  
Industry Arbitrator

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Robert Flanagan: One Hundred Thirty Eight Thousand One Hundred Ninety Three Dollars and Thirty One Cents (\$138,193.31)

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Forum fees Assessed Against Respondent Prudential-Bache Securities, Inc.


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

By The Arbitration Panel:

Dated:

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LeRoy Patton, Esq.  
Public Arbitrator, Chairperson

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Kelley L. Cornelius  
Public Arbitrator

  
Ira W. Panton  
Industry Arbitrator

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