

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Thomas & Barbara Moran )

) Case No. 91-01327

Name of Respondent(s) )

Prudential-Bache Securities Inc. )

Robert F. Sterling, III )

REPRESENTATION

For Claimant, Thomas & Barbara Moran ("the Morans"): Eric Hasko, Esq. of Hall Hasko & Leibovitz, P.A.

For Respondents, Prudential Securities, Inc. ("Prudential") and Robert Sterling III ("Sterling"): John Boykin of Boose, Casey, Ciklin, et. al.

CASE INFORMATION

Statement of Claim filed: April 25, 1991. Claimant's Submission Agreement signed on: April 17, 1991.

Respondents' Statements of Answer filed: July 8, 1991. Respondents' Submission Agreements signed by Sterling on June 3, 1991, and by Kevin Prawley on behalf of Prudential on September 18, 1991.

HEARING INFORMATION

On April 7 and 8; May 5, 6 and 7, 1992, in Fort Lauderdale, Florida, hearings lasting 11 sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for misrepresenting the safety of certain limited partnerships and mutual funds and that said investments were unsuitable for Claimants in light of their investment objectives of safety.

Respondents denied all allegations of wrongdoing and alleged that Claimants were experienced investors; Claimants were informed of the risks involved and the Morans kept in constant contact with Sterling.

Respondents alleged the affirmative defenses of failure to state a claim; assumption of risk; ratification; account stated; estoppel; waiver; laches; failure to exercise due diligence to mitigate damages; lack of scienter;

statute of limitations; Claimants' request for punitive damages violates the Florida and United States Constitutions; Respondents' actions did not cause Claimants' losses; and the arbitration panel is without jurisdiction to award attorney's fees.

#### RELIEF REQUESTED

Claimants requested damages in excess of \$500,000.00 plus punitive damages, interest, costs, and attorney's fees. Although the Claimant's requested attorney's fees in their Statement of Claim, they indicated at the hearing that they would seek a determination from the courts as to such request.

Respondents requested dismissal of the claim, plus costs.

#### OTHER ISSUES CONSIDERED & DECIDED

1. 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.
2. Respondents' Motion to Dismiss under Section 15 of the NASD Code of Arbitration Procedure is denied.
3. Respondents' Motion to Preclude from consideration by the Panel the claim relating to Watson-Taylor #3 limited partnership is granted on the basis of the class action settlement.
4. Respondents' Motion to Dismiss under Chapter 517 of the Florida Statutes on the basis of the Statute of Limitations is denied.

#### AWARD

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

1. Respondents, Prudential and Sterling, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$92,544.00 inclusive of interest.
2. Upon receipt of \$72,250.00 of the \$92,544.00 specified in paragraph #1 above, Claimants shall execute any documents necessary to effect a transfer of all their right, title and interest in PB Acquisition Fund #2 limited partnership to Respondents, Prudential and Sterling.
3. Claimants' claims for rescission as to the remaining limited partnerships are denied.
4. Claimants' request for attorney's fees is denied since the Panel finds no contractual or statutory basis for such an award.

OTHER COSTS

1. Respondent, Prudential, is found liable for costs related to Claimants' expert, Clark Mobil, such costs to be determined by an appropriate court of competent jurisdiction.
2. All costs related to Claimants' expert, Gabriel Nagy, are to be borne by Claimants.
3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,250.00 (11 sessions x \$750.00 per session). Claimants are hereby assessed \$4,125.00 for which the NASD shall retain the \$1,050.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$3,075.00. Respondents, Sterling and Prudential, are hereby assessed \$4,125.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/S/  
Linda A. Singer Stein, Esq.

Public

/S/  
Harold Alenick

Public

/S/  
Penny H. Miller

Industry

Date of Decision: May 29, 1992