

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Earle E. & Patricia A. Kruggel,
Raymond J. and Jane M. Daul,
Eagle Plumbing Profit Trust,
Eagle Plumbing Company

**NASD Arbitration
NASD #91-01330**

Name of Respondents

Prudential-Bache Securities, Inc.
PaineWebber, Inc.,
Marshall J. Field

REPRESENTATION

For Claimants: H. Thomas Fehn, Esq., of Fields, Fehn & Sherwin of Los Angeles, California.

For Respondent (Prudential): Kevin Hurley, Esq., pro se.

For Respondent (PaineWebber): Scott M. Ratchick, Esq., pro se.

For Respondent (Field): Mitchell Ostawald, Esq. of Seaman, Seaman & Ostwald of Sacramento, California.

CASE INFORMATION

Statement of Claim filed: April 26, 1991

Claimants' Submission Agreement signed:

Earle E. and Patricia Kruggel:	May 22, 1991
Eagle Plumbing Profit Trust & Eagle Plumbing Company,	
Raymond J. and Jane M. Daul:	May 24, 1991

Statement of Answer filed by Respondents':

Prudential-Bache Securities and Field:	September 17, 1991
PaineWebber, Inc.:	August 2, 1991

Respondents' Submission Agreement signed:

Prudential-Bache Securities and Marshall Field did not file submission agreements but filed Answers and appeared at the arbitration and are subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with NASD Code of Arbitration Procedure Section 12.

PaineWebber, Inc.: August 2, 1991

HEARING INFORMATION

Pre-Hearing Conference: January 13, 1992 (one session)

Hearing Date(s)/Sessions: January 26, 1993 (two sessions)
January 27, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged: Unsuitability of security transactions, misrepresentation and breach of fiduciary duty. Respondent Marshall Field (Field) was registered a representative who serviced claimants' accounts originally at Prudential-Bache Securities (Prudential) and subsequently at PaineWebber, Inc. (PW).

Claimant Kruggel (Kruggel) was "cold called" by respondent Field (Field) in 1982, and opened an account for him at Smith Barney Harris Upham & Company (SBHU). In 1986 Kruggel recommended Field to his business partner claimant Daul. In July of 1986, Field left SBHU for employment with Prudential and Daul and Kruggel opened accounts with him there. Both claimants were interested in conservative portfolios diversified among various tax free California bonds. Both purchased Castle Pines debentures due in 1999, but neither was given a prospectus prior to the purchases and Field represented they were safe but did not disclose they were Colorado, not California bonds. Additional purchases were made into 1987.

Field also purchased Prudential-Bache Hi Yield Fund and Series 3 Corporate Hi Yield Fund for Kruggel: again claimant received no prospectuses. Other bonds were purchased for claimants' account which also were not conservative in nature.

Field left Prudential for employment at PaineWebber, Inc. in 1989, and kept assuring claimants to hold the above positions despite losses. Field avoided Kruggel and increasingly became unavailable as the investments continued to decline. In December 1990, claimants transferred all accounts from PW and discovered all of Fields misrepresentations.

Respondent Prudential alleged: claimants are affluent, high net-worth individuals and sophisticated investors. Claimants repeatedly informed Field their objective was to achieve high levels of taxable and tax-free current income, and were not risk averse and received all prospectuses as part of Prudential's standard procedure. They received confirmation and monthly statements identifying the bonds as being from Colorado. Claimants also had invested previously in similar, speculative investments. In addition, most of their losses were suffered when their accounts were with PW. Prudential also alleged affirmative defenses.

Respondent PW alleged: PW generally and specifically denied each and every allegation of wrongdoing and cause of action asserted against it by claimants. Claimants opened securities accounts with PW on July 30, 1989 at its Century City, California branch. The Investment Executive who handled claimants' accounts was Field.

All of claimants' investments were purchased either at Prudential or some other brokerage firm and PW cannot be held responsible for any investments made prior to the time they opened their accounts at PW. Claimants were fully aware of the potential for loss in their investments before ever opening an account at PW, did not inform PW they were intolerant of any degree of loss and did not mitigate losses.

Field may have recommended that claimants hold onto some investments that had decreased in value, but did not guarantee losses. Claimants continue to maintain active accounts with PW. PW also asserted affirmative defenses.

Respondent Field alleged: claimant Kruggel was a client for six years, from 1984 to 1990 and had told him he had made varied investments. Claimant Daul opened his account with Field in 1985 at SBHU. Kruggel wanted the highest possible return and full disclosure was made regarding his investments, including that the Castle Pines bonds were a Colorado issue.

Claimant Kruggel and Field talked at least once a month and discussed the bonds he owned. They talked about the market in general, market conditions, and the decline in the high-yield market. Every telephone call and message was responded to immediately.

RELIEF REQUESTED

1. Damages on behalf of Earle Kruggel's personal account of approximately \$100,000.00;

2. Damages on behalf of Raymond Daul's personal account of approximately \$70,000.00;
3. Damages on behalf of the Eagle Plumbing Account of approximately \$65,000.00;
4. Damages of behalf of Eagle Plumbing Profit Sharing account of approximately \$200,000.00;
5. Interest on the above losses from their respective dates of realization; and
6. Punitive damages in an amount to be determined by the panel;
7. Reasonable costs and attorneys' fees.

OTHER ISSUES CONSIDERED & 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 original remain on file with the NASD.

AWARD

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

1. All claims are dismissed;
2. The claim for punitive damages is dismissed;
3. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Claimants jointly and severally, for \$125.00; and

Respondents, jointly and severally for \$2,475.00.

calculated as follows: Four hearing sessions times \$750.00/session, plus \$300 for one prehearing session, equal \$3,300.00. Claimants hearing deposit of \$750.00 has been deducted from their assessment, leaving a balance of \$125.00.

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


Arbitrators

Chet Olsen
Ruth Lavell
B.P. Lester

Public/Industry Arbitrator

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures


Chet Olsen

DATE SERVED: 2/26/93

Date of Decision: _____