

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William Shockey, Jo Ann C. Shockey McBrady

No. 91-01528

Name of Respondent(s)

Prudential-Bache Securities, Inc.
Thomas E. Turnbaugh

REPRESENTATION OF PARTIES

For Claimants: John Lieberman, Esq., Chicago, Illinois.

For Respondents: Christopher Triapani, Esq. Assistant Vice
President, Assistant General Counsel Prudential Securities.

CASE INFORMATION

Statement of Claim filed: May 17, 1991

Claimants' Submission Agreements signed on: May 14, 1991

Statement of Answer and motion to dismiss filed by Respondents,
Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh on:
July 29, 1991

Respondent, Prudential-Bache Securities, Inc.'s Submission
Agreement signed on: July 27, 1991.

Respondent, Thomas E. Turnbaugh Submission Agreement signed on:
July 25, 1991.

Claimant's answer to Respondent's motion to dismiss filed:
August 23, 1991

HEARING INFORMATION

Hearing Date: March 1, 1992. 2 sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants William Shockey and Jo Ann C. Shockey McBrady ("Claimants") alleged that: Respondents Thomas E. Turnbaugh ("Turnbaugh") and Prudential-Bache Securities, Inc. (PBSI) committed fraud by intentionally and falsely omitting to inform Claimants that the Prudential-Bache Energy Income Fund ("the fund") was illiquid for the purpose of inducing claimants to purchase the fund, and Claimants had reasonably relied upon the representations; and Respondents Turnbaugh and PBSI breached their fiduciary duty to Claimants. On May 22, 1985, Claimants opened an account at PBSI through Turnbaugh, a broker with PBSI. Claimants were allegedly unsophisticated, and based on the recommendation of Turnbaugh, purchased \$10,000 of the Fund 85 P9 on or about September 15, 1985, and \$5,000 for the Fund 85 P10 on October 25, 1985. By October, it was alleged that approximately 42% of Claimants' account was invested in the fund. It was alleged that it was not until sometime in 1988 that Claimant's were informed the Fund was illiquid and they could not withdraw invested funds.

In their joint Statement of Answer and motion to dismiss Respondents Turnbaugh and PBSI denied Claimants' allegations. Respondents Turnbaugh and PBSI alleged that claimants made a fully informed decision to purchase the fund after they were advised that it was an illiquid investment. Further, Claimants received prospectuses which disclosed the risk of the investment. Lastly, Respondents Turnbaugh and PBSI asserted that Claimants' claims and time-barred under the statute of limitations applied in Lampf, Pleva, Lipkind, Prupis & Petigroer v. Gilbertson et al., No. 90-333 (U.S. June 20, 1991).

RELIEF REQUESTED

Claimants requested:

- 1) Compensatory damages in the amount of \$15,000;
- 2) Legal interest running from the dates of purchase;
- 3) Exemplary damages in the amount of \$45,000;
- 4) Costs; and,
- 5) Attorney's Fees.

Respondents Turnbaugh and PBSI requested that the Statement of Claim be dismissed or in the alternative requested that the claims be denied in their entirety and that all costs of this arbitration be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing held March 11, 1992, Respondents Turnbaugh and PBSI renewed their motion to dismiss. After hearing argument from both parties, and deliberation, the panel ruled that the motion would be taken under advisement and be ruled upon in the final determination of this matter.

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.

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. Respondents', Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh, motion to dismiss is hereby denied and dismissed;
2. Respondents Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for, and shall repurchase both of the Prudential Energy Income Funds (the Fund 85 P9 and the fund 85 P10) for a total of \$15,000 from the Claimants William Shockey and Jo Ann C. Shockey McBrady;
3. Respondents Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for, and shall pay to Claimants William Shockey and Jo Ann Shockey McBrady the sum of \$30,000 for punitive damages. The authority for the award of punitive damages is found in: Home Savings and Loan Association vs. Schneider, (1985) 108 Ill. 2d 277, 483 NE 2d. 1225; Obermaier vs. Obermaier, (1st. Dist. 1984) 128 Ill. App. 3d. 602, 470 NE 2d. 1047; and Rule 10b of the Securities and Exchange Act of 1934 and Section 10b-5 promulgated thereunder;
4. All parties shall bear their own attorney's fees;
5. Respondent Prudential-Bache Securities, Inc. is hereby ordered to delete any debit balance in Claimants', William Shockey and Jo Ann C. Shockey McBrady, account;
6. Respondents Prudential-bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for, and shall pay to Claimants William Shockey and Jo Ann Shockey McBrady interest at the rate of 9% per annum on the total amount of

\$45,000, to run from March 11, 1992 until this award has been paid;

7. Respondents Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for all hearing costs as set forth more fully below.

FORUM FEES

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

2 hearing sessions X \$500.00 = \$1,000

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00 and shall refund the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Pursuant to Section 43(c) Respondents Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for, and shall pay to the NASD the sum of \$1,000.00 for the hearing session fees incurred on March 11, 1992.

Respondents Prudential-Bache Securities, Inc. and Thomas E. Turnbaugh are jointly and severally liable for, and shall pay to the Claimants William Shockey and Jo Ann Shockey McBrady the sum of \$500.00 for filing fees expended to file this arbitration.

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

Concurring Arbitrators' Signatures

Name

Date:

John R. Wylie /s/
John R. Wylie, Esq.
Presiding Chair
Public Arbitrator

April 6, 1992

Stephen C. Esposito /s/
Stephen C. Esposito
Public Arbitrator

April 2, 1992

Susan K. Franz /s/
Susan K. Franz
Industry Arbitrator

April 1, 1992