

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Fred W. Alber

91-01817

Name of Respondent(s)

Prudential-Bache Securities Inc. n/k/a
Prudential Securities Incorporated
Bob Brown
Robert Hudgins

REPRESENTATION

For Claimant: Fred W. Alber was represented by Lawrence R. Galber, Esq. of Beigel & Sandler, Ltd., New York, New York.

For Respondents: Prudential-Bache Securities, Inc., n/k/a Prudential Securities Incorporated, Robert Hudgins and Bob Brown were represented by Terry Ross, Esq. of Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed: June 11, 1991

Claimant's Submission Agreement signed on: June 3, 1991

Joint Statement of Answer filed by Respondents Prudential-Bache Securities Inc. n/k/a Prudential Securities Incorporated, Robert Hudgins and Bob Brown on: August 18, 1991

Respondent Prudential Securities Incorporated's Submission Agreement signed on: September 4, 1991 by Peter M. Lynch, Branch Manager, Prudential Securities, Albuquerque, New Mexico.

Respondent Bob Brown's Submission Agreement signed on: September 11, 1991

Respondent Robert Hudgins' Submission Agreement signed on: September 4, 1991

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Dates/Sessions: December 3, 1991 for two (2) sessions
December 4, 1991 for three (3) sessions
December 13, 1991 for two (2) sessions

Hearing Location: Albuquerque, New Mexico

CASE SUMMARY

Claimant Fred W. Alber ("Alber") alleged that Respondent Bob Brown ("Brown") and Robert Hudgins ("Hudgins"), while employed by or acting as an agent for Respondent Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated ("Prudential"), misrepresented and/or failed to disclose the risks of the following investments:

1. Prudential-Bache Energy Growth Fund II, a limited partnership;
2. Prudential-Bache Energy Growth Fund IV, a limited partnership;
3. Prudential-Bache/Fogelman Harbour Town Properties, a limited partnership;
4. VMS Mortgage Investors Fund;
5. Prudential-Bache Energy Income 22, a limited partnership;
6. Fogelman Secured Equities I, a real estate limited partnership;
7. RAC Mortgage Investment Corp., a real estate investment trust;
and
8. MDC Asset Investors, Inc., a real estate investment trust.

In addition, Alber alleged that the investments were unsuitable given his personal situation and stated objective of safety of principal and that the Respondents falsified information on his new account form and partnership forms. Based upon the above allegations, Alber asserted claims for securities fraud pursuant to Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; common law fraud; breach of fiduciary duty; negligence; violation of industry rules; breach of contract; violation of the Racketeer Influenced and Corrupt Organizations Act (RICO); and for respondeat superior.

Respondents Prudential, Hudgins and Brown denied both generally and specifically the entire thrust and all substantive allegations of the Statement of Claim, alleging that:

1. Alber has failed to state facts sufficient to give rise to a cause of action against respondents upon which relief can be granted;
2. Alber specifically authorized, fully discussed and was fully aware of the risks of the transactions made in his account;
3. Alber has waived rights and is estopped from making his claims because of his acceptance of the investment strategies employed in his account and his failure to complain even after receiving monthly statements and confirmation slips;
4. Prudential had a valid system of control over its employees and, at all times, acted in a proper and adequate supervisory capacity over them;
5. The damages suffered, if any, were the result of other causes than those alleged in the Statement of Claim;
6. Alber failed to mitigate damages;
7. Alber participated in all investment decisions and therefore, if they were inappropriate, he is tainted with unclean hands and is in pari delicto;
8. Alber expressly ordered, approved, authorized, participated in, and ratified the transactions complained of and is precluded from recovery; and
9. All risks concerning the investments in Alber's account were known to him and he knowingly, willingly and voluntarily assumed those risks.

RELIEF REQUESTED

Claimant Alber requested entry of an award against Respondents for compensatory damages in an amount to be determined at hearing, trebled under RICO; interest at the appropriate statutory rate from March, 1988 to the date of the decision in this matter, trebled under RICO; attorneys' fees, costs and expenses; unspecified punitive damages; and such other relief as the Panel deemed just and proper.

Respondents Prudential, Hudgins and Brown requested that the arbitrators deny all claims.

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 originals remain on file with the NASD.

At hearing, Claimant Alber withdrew his claims concerning the investments in RAC Mortgage Investment Corp. and MDC Asset Investors, Inc. Respondents consented to the withdrawal of these claims.

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. Respondent Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated is liable for and shall pay to the Claimant Fred W. Alber the sum of \$32,500.00 plus interest at the rate of 15% per annum from the date of service of the award until the award is paid;
2. Respondent Robert Hudgins is liable for and shall pay to Claimant Fred W. Alber the sum of \$12,500.00 plus interest at the rate of 15% per annum from the date of service of the award until the award is paid;
3. Respondent Bob Brown is liable for and shall pay to Claimant Fred W. Alber the sum of \$12,500.00 plus interest at the rate of 15% per annum from the date of service of the award until the award is paid;
4. All claims for punitive damages and for RICO violations and damages are hereby dismissed and denied in their entirety; and
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: Seven (7) sessions x \$600.00 = \$4,200.00

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$600.00 previously deposited by the Claimant Fred W. Alber. Respondent Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated, is

liable for and shall pay to the NASD forum fees in the sum of \$4,200.00.

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

BY THE ARBITRATION PANEL

Dated:

Clinton W. Marrs
Clinton W. Marrs, Esq.
Public Arbitrator
Chairperson

March 6, 1992

George F. Bingham
George F. Bingham, Esq.
Public Arbitrator

March 6, 1992

Mike Edward Mimovich
Mike Edward Mimovich
Industry Arbitrator

March 6, 1992

Date Served: March 20, 1992