

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Kristine E. and Larry D. Lamanna

91-01989

Name of Respondent

Prudential Securities, Inc.

Richard D. Chegar

Jerry C. McMullen

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REPRESENTATION

For Claimants: Claimants were represented by Steve Coons, Esq. of Coons & Saint, Indianapolis, Indiana.

For Respondents: Respondents were represented by David C. Campbell, Esq. of Bingham Summers Welsh & Spilman, Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed: June 24, 1991.

Claimant's Submission Agreement signed in: June of 1991.

Joint Statement of Answer filed by Respondents, Prudential Securities, Inc., Richard D. Chegar and Jerry C. McMullen: On or about September 25, 1991.

Respondents did not file an executed submission agreement, but answered, appeared and testified at the hearing and are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration.

Respondents' Motion to dismiss pursuant to Section 15 of the Code of Arbitration Procedure filed: September 25, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: June 22, 1992. Two (2) sessions.  
June 23, 1992. Two (2) sessions.

Hearing Location: Indianapolis, Indiana

CASE SUMMARY

Claimants Kristine E. and Larry D. Lamanna ("Claimants") alleged that Respondents Prudential Securities, Inc. ("PSI"), Richard D. Chegar ("Chegar") and Jerry C. McMullen ("McMullen") misrepresented unsuitable investments and failed to adequately supervise their employees in connection with the Claimants' purchase of twelve (12) limited partnerships. The circumstances leading to the allegations are as follows.

On April 2, 1987, Claimants invested in the Equitec 13 Limited Partnership, the Prudential Acquisition Fund I Limited Partnership and the Pru-Bache Energy 2A Limited Partnership upon the advice of Respondent Chegar ("Chegar"). Claimants alleged that Chegar recommended the three (3) initial acquisitions without adequately apprising himself as to the Claimants' actual financial condition. Further, Claimants alleged that Chegar encouraged these investments in what they describe as "illiquid and risky" partnerships while representing to the Claimants that the partnerships were conservative low-risk investments that should return sixteen percent (16%) after taxes each year.

By the end of 1987, Claimants had invested in a total of twelve (12) limited partnerships which allegedly provided only low and negative returns. The additional limited partnerships as set forth in the Statement of Claim are as follows: Equitec Leasing Investors L.P.; Prutech R&D 2 L.P.; Polaris Income Fund One; Polaris Income Fund 2; Pru-Bache Energy Partnership 12; Prudential Bache Energy Growth Fund 3; and Pru-Bache Energy 12 L.P. Claimants also alleged that all of the limited partnership investments recommended by Respondents were blatantly unsuitable for their stated investment objectives and that had Chegar allegedly had not advised the Claimants of the risk involved. Lastly, Claimant alleged that had McMullen properly supervised his employees and branch office, the Claimants' loss would have been avoided.

In their Statement of Answer, Respondents PSI, Chegar, and McMullen denied each and every material allegation contained in the Statement of Claim and raised a counterclaim for the costs associated with defending the lawsuit. In addition, Respondents asserted the following affirmative defenses:

- 1) Claimants authorized, accepted and/or ratified each of the transactions of which they now complain.
- 2) At all times relevant, Claimants' account was handled properly and in accordance with the "Know your Customer" Rule of the New York Stock Exchange, Inc. and the "Suitability Rule" of the National Association of Securities Dealers as well as other applicable rules and regulations.
- 3) Claimants' account was invested in accordance with their investment objectives.

- 4) Any losses sustained by Claimants are attributable to market conditions and to their own investment decisions, not to any action or inaction on Respondents' part.
- 5) This claim is barred by the doctrine of waiver, estoppel and ratification.
- 6) This claim is barred by the applicable Statute of Limitations.
- 7) Claimants have failed to state a claim upon which relief can be granted.
- 8) Claimants have failed to state a claim for punitive damages.

**RELIEF REQUESTED**

Claimants requested: an award of \$38,000.00 in principal from their investments plus interest of ten percent (10%) per annum (totalling \$69,403.00); Prudential Securities, Inc. and Chegar be required to compensate them for their reasonable attorneys' fees and expenses; Respondent's bear all costs associated with this proceeding; punitive damages of \$1,000,000.00; and all further relief available under applicable laws and regulations.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice and that Respondents be awarded their reasonable costs associated with this proceeding.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondents did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure, and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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.

In addition, Respondents' Motion that Claimants' counsel be disqualified and compelled to withdraw from participation in the case was denied.

**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 Securities, Inc., Richard D. Chegar and Jerry C. Mullen are jointly and severally liable for and shall pay to the Claimants Kristine E. and Larry D. Lamanna compensatory damages in the amount of \$26,366.00 and lost interest in the amount of \$28,288.63, plus interest beginning July 1, 1992 until said award is paid in full; and
- 2) Claimants Kristine E. and Larry D. Lamanna's claims under RICO, and for punitive damages are hereby denied and dismissed with prejudice; and
- 3) Respondents are jointly and severally liable for Claimants' attorney fees in the amounts of \$19,450.00 to Claimants' primary counsel and \$5,000.00 to additional counsel. The authority for the award of attorneys' fees can be found in Indiana Code Section 23-2-19- (b).

**FORUM FEES**

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

4 sessions X \$1,000.00 minus hearing session deposit of \$1,000.00 = net \$3,000.00 due.

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by Claimants.

Respondents Prudential Securities, Inc., and Richard D. Chegar, and Jerry C. McMullen are jointly and severally liable for, and shall reimburse to Claimants Kristine E. and Larry D. Lamanna their filing fee and hearing session deposit in the amount of \$1,250.00.

Additional forum fees in the amount of \$3,000.00 are assessed jointly and severally against the Respondents.

Pursuant to Sections 43(c) and 30(b) of the Code of Arbitration Procedure, the NASD shall retain the postponement fee in the amount of \$1,000.00 previously paid to the NASD by Respondent Prudential Securities, Inc.

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

By The Arbitration Panel:

Dated:

Thomas E. Alsip /s/  
Thomas E. Alsip  
Public Arbitrator  
Chairperson

September 5, 1992

Brady J. Fletcher /s/  
Brady J. Fletcher, Ed.D.  
Public Arbitrator

September 4, 1992

Beth Schmidt /s/  
Beth Schmidt  
Industry Arbitrator

September 4, 1992

Date Award Served by NASD:

9-17-92