

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert H. Hardy, M.D.

and

91-02168

Name of Respondents

Prudential Securities, Inc.
Donald S. Robbins

REPRESENTATION OF PARTIES

Claimant was represented by Max D. Crittenden, Esq. and A.L. Rhodes, Esq. of Rhodes, Heatherly & Myers, Abilene, Texas.

Respondent Prudential Securities, Inc. was represented by Corbet F. Bryant, Esq. of Carrington, Coleman, Sloman & Blumenthal, Dallas, Texas.

Respondent Donald S. Robbins was represented by B. Darryl Bristow, Esq. of Bristow, Hackerman, Wilson & Peterson, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 16, 1991. Claimant's Submission Agreement signed on June 26, 1991.

Statement of Answer filed by Respondent Prudential Securities, Inc. on or about September 12, 1991. Respondent Prudential Securities, Inc. Submission Agreement signed on September 4, 1991 by Kevin Frawley.

Statement of Answer filed by Respondent Donald S. Robbins on or about September 12, 1991. Respondent Donald S. Robbins Submission Agreement signed on September 12, 1991.

HEARING INFORMATION

A pre-hearing conference was held on May 12, 1992 for one (1) session. This pre-hearing conference was presided over by Howard V. Tygrett, Jr., Esq. the then presiding chairman.

The hearing was held on Wednesday, July 15, 1992 for two (2) sessions, Thursday, July 16, 1992 for three (3) sessions, and

Friday, July 17, 1992 for one (1) session in Dallas, Texas for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents acting in a fiduciary capacity, recommended an investment portfolio totally unsuited to the Claimant's investment objectives. Claimant further alleged that Respondent Prudential failed to supervise, allowed improper concentration and violated Federal and State law. Claimant specifically alleged that the following limited partnerships were unsuitable: Almahurst Bloodstock II, La Jolla Village Associates, 850 Third Avenue, Orlando Spanish Trace, 680 5th Avenue, Madison Plaza Associates, and Frenchman's Reef Beach Associates.

Respondent Prudential Securities, Inc. ("Prudential") stated that there were no misrepresentations made to the Claimant, that the account was properly supervised, denied any breach of fiduciary duty to the Claimant, and that the investments were suitable for the Claimant. Prudential specifically stated that the Claimant was a person of substantial financial means and had a high level of sophistication. Prudential also asserted the following affirmative defenses: certain securities are the subject of the class action settlement and those claims involving La Jolla Village Professional Center Associates, 850 Third Avenue Limited Partnership, Orlando-Spanish Trace Associates, Ltd., and Frenchman's Reef Beach Associates are therefore barred; the Claimant does not have proper standing to pursue this claim as a result of his bankruptcy filing; the claims are barred by the applicable statutes of limitations; and the claims are barred under Sections 15 of the NASD Code of Arbitration Procedure.

Respondent Donald S. Robbins ("Robbins") stated that he made recommendations to purchase the limited partnerships based upon the information furnished to him by Respondent Prudential. Respondent Robbins further stated that the allegations set forth in the Statement of Claim about Prudential and how Prudential marketed itself are true.

RELIEF REQUESTED

Claimant requested an award of actual damages in the amount of \$1,388,176.00, treble damages pursuant to the Texas Business and Commerce Code in the amount of \$2,766,352.00 and unspecified attorney's fees.

Respondent Prudential requested that the claims asserted herein be dismissed and that it be awarded it's reasonable attorney's fees.

Respondent Robbins requested that the claims asserted against him in this matter be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

After considering the arguments of the parties, the panel has determined that it will not consider the matters involving VMS partnerships. The Claimant was allowed to discuss the securities involved in the VMS litigation as part of his case in chief but that the panel was not considering those matters which are covered by the settlement agreement in the VMS litigation. The panel will endeavor to reconvene in the event that Claimant is successful in being removed from the class in the VMS litigation and refiles his claims involving the VMS partnerships in arbitration. The parties were advised that the status of the arbitrators is subject to change. The parties did not object to this panel hearing the VMS matters in the event that an arbitrators status changes.

At the commencement of the hearing, Respondent Donald S. Robbins asserted a motion to dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure. After considering the arguments presented on behalf of the parties, the panel took the matter under advisement.

At the conclusion of the testimony of Respondent Robbins, a motion to dismiss him from this matter was entered. After hearing the arguments of the respective parties, the panel granted he motion and dismissed Mr. Robbins from 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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the Claimant Robert H. Hardy, M.D. the sum of \$45,000.00 (Forty five thousand dollars).
2. No interest is awarded on the above stated sum.

3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$2,150.00 and Respondent Prudential Securities, Inc. shall pay to the NASD the sum of \$3,150.00 as forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

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

Dated:

Marc A. Myrin, Esq.
Presiding Chair
Public Arbitrator

Lisa R. Browning, Esq.
Public Arbitrator

Aug 14, 1992

Jack C. Payne
Industry Arbitrator

3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

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The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

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

Dated:

Aug. 25, 1992

Marc A. Myrin, Esq.
Presiding Chair
Public Arbitrator

Lisa R. Browning
Lisa R. Browning, Esq.
Public Arbitrator

Jack C. Payne
Industry Arbitrator