

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Fred C. & Rosemarie V. Mueller

91-02311

Name of Respondents

Prudential-Bache Securities Inc. -
Bernard Seyller

REPRESENTATION OF PARTIES

Claimants appeared pro se.

Respondents were represented by Robert L. Jackstadt, Esq. of Peper, Martin, Jensen, Maichel and Hettiage, St. Louis, MO.

CASE INFORMATION

The Statement of Claim was filed on or about July 30, 1991.

Claimant's Submission Agreement signed on July 20, 1991 by Fred C. Mueller and Rosemarie V. Mueller.

Statement of Answer filed by Respondents on or about August 30, 1991.

Respondent Prudential Securities, Inc.'s Submission Agreement signed on September 26, 1991 by Carlos Ricca.

HEARING INFORMATION

The hearing was held on Tuesday, April 28, 1992 in St. Louis, Missouri for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that Respondent Bernard Seyller an employee of Respondent Prudential Securities, Inc. talked them into selling their mutual fund investments and investing in limited partnerships in order to receive commissions. The limited partnerships the Claimants invested in were Growth Hotel Investors 2; Polaris Aircraft Income Fund 3; and Polaris Aircraft Income Fund 5. Claimants further alleged that they wanted safe investments with conservation of principal.

Respondents denied the allegations set forth in the Statement of Claim.

Respondents specifically stated that the claimants had a diversified portfolio of investments consistent with their stated investment objectives of income and long term growth. Respondents also asserted that the claims were barred by the statutes of limitations and asserted the following affirmative defenses: failure to mitigate, laches and equitable estoppel.

RELIEF REQUESTED

Claimants requested an award in the amount of \$61,734.00. The Claimants amended their request to an award in the amount of \$62,654.00 which amount includes punitive damages in the amount of \$5,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Bernard Seyller did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is 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 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. The Rosemarie Mueller IRA shall transfer all title and interest in Polaris Aircraft Income Fund 3 and Polaris Aircraft Income Fund 5 to Respondents Prudential Securities, Inc. and Bernard Sellyer.
2. Simultaneous therewith Respondents Prudential Securities, Inc. and Bernard Sellyer shall pay to the Claimant the full purchase price plus interest at the rate of 9% per annum from the date of purchase to the date this award is paid in full minus any distributions received by the Claimant.
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 \$150.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondent Prudential Securities, Inc. shall pay to the NASD the sum of \$500.00 as forum fees.

Forum fees are calculated at the rate of \$500.00 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:

June 19, 1992

David P. Oetting, Esq.
Presiding Chair
Public Arbitrator

June 25, 1992

Charles W. Schweitzer
Public Arbitrator

June 16, 1992

Keith D. Patten, Esq.
Industry Arbitrator

NASD decision served on: July 7, 1992