

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Kenneth H. & Frances Kortright )

Name of Respondent(s) )

Prudential-Bache Securities Inc. )

Melvin Harris )

Gerald Ballan )

Case No. 91-02410

REPRESENTATION

For Claimants, Kenneth and Frances Kortright ("the Kortrights"): Gerald V. Walsh, Esq. of the law offices of Gerald V. Walsh.

For Respondents, Prudential Bache Securities, Inc. ("Prudential"), Melvin Harris ("Harris"), Gerald Ballan ("Ballan"): Sara Soto, Esq. of Fowler White Burnette, et al.

CASE INFORMATION

Statement of Claim filed: August 6, 1991. Claimants' Submission Agreement signed: July 11, 1991.

Respondents' Statement of Answer filed: September 25, 1991. Respondents Submission Agreements signed: September 12, 1991 by Harris and Ballan.

Respondent, Prudential, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (See Other Issues).

HEARING INFORMATION

On September 21 and 22, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for selling a substantial portion of Claimants' portfolio of stocks, which had a very low tax basis, and, placing Claimants into an unsuitable junk bond fund and stocks which had very high tax costs associated therewith. Claimants alleged that Respondents were negligent and breached their fiduciary duty.

Respondents denied all allegations of wrongdoing and alleged that: the withdrawals made by Claimants necessitated the liquidation of numerous securities and the purchase, with Claimants' authorization, of securities yielding the highest possible income; the purchases were in accord with Claimants' investment objectives; and Claimants were advised to discuss the tax consequences with their accountant.

Respondents alleged the affirmative defenses of: failure to state a claim; failure to mitigate damages; waiver; assumption of risk; contributory negligence; and, that the losses were caused by the conduct of a third party.

#### RELIEF REQUESTED

Claimants requested damages for tax costs in the amount of \$57,947.10, plus punitive damages in the amount of \$150,000.00, plus attorney's fees of \$7,000.00, costs of \$1,500.00 and other actual damages for losses and brokerage commissions of \$60,667.64.

Respondents requested dismissal of the claim, plus costs.

#### OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that Respondent, Prudential, was required to sign a Submission Agreement pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure, Respondent, Prudential, being an NASD member firm at the time this controversy arose.
2. 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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Prudential, Ballan and Harris, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees, costs, and punitive damages is denied.
3. Respondents' request for costs is denied.

#### OTHER COSTS

1. Respondent, Prudential, is liable for the \$750.00 postponement fee for the postponement of the hearings scheduled for September 1 and 2, 1992.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 ( four sessions x \$750.00 per session).

2. Claimants are hereby assessed \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof.

3. Respondent, Prudential, is hereby assessed \$750.00 payable to the National Association of Securities Dealers, Inc.

4. Respondent, Ballan, is hereby assessed \$750.00 payable to the National Association of Securities Dealers, Inc.

5. Respondent, Harris, is hereby assessed \$750.00 payable to the NASD.

6. The NASD shall retain the non-refundable filing fee of \$200.00, paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/  
Ronald Thomas Spann, Esq.

Public

/s/  
Harold D. Powell, Jr.

Industry

/s/  
Earl Fleisig

Public

Date of Decision: November 3, 1992