

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :
 :
 Dave M. & Michelle R. Enriquez, JTWR0S :
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 Claimants :
 :
 vs. :
 :
 Prudential Securities, Inc. :
 :
 Respondent :

CASE #91-03005
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 26, 1991, Claimants, Dave M. & Michelle R. Enriquez, who appeared Pro Se, alleged that Respondent, Prudential Bache Securities, Inc., through its broker, Carl Gottuso recommended unsuitable investments in a limited partnership known as SFG-Rialto Estates, and that the Respondent failed to adequately supervise Mr. Gottuso. The Claimants further alleged that the limited partnership is now bankrupt, and that their broker had violated the Securities Act by "selling away" from the firm.

Respondent, Prudential Securities, Inc., through its in-house counsel, Stephen Z. Frank, Esq., maintained that Carl Gottuso did not recommend the purchase of the Partnership, that this purchase was not the result of its failure to supervise Mr. Gottuso, and that the Claimant's did not suffer a loss. The Respondent further maintains that it was the General Partner, not the limited partnership that filed for the bankruptcy, and that the partnership remains viable. Respondent, Prudential Securities, Inc. requested the claim be dismissed.

Claimants, in a reply to Respondent's answer, state that this claim should not be dismissed since Mr. Gottuso used his position to sell a partnership which had not been approved by the firm, and that if Mr. Gottuso wasn't their financial advisor, they never would have known about the partnership.

In an addendum to the Respondent's Motion to Dismiss, and answer, Prudential Securities, Inc. further maintained that since the Claimants do not allege that it, itself as controlling person, participated in or gained a benefit from the sale of the Limited Partnership, Prudential Securities, Inc. is not a proper party to this action and reiterated its request for dismissal.

Claimants, Dave M. and Michelle Enriquez filed an additional submission stating that they were able to obtain a settlement with the General Contractor of the Limited Partnership, and that although Prudential Securities, Inc. drew up a general release and agreed to pay \$3,000.00 as a settlement, the agreement was broken when Prudential Securities, Inc. discovered the Claimants had recovered their loss through the Partnership.

Respondents filed an expanded version of their previous motion to dismiss to reflect that since pertinent information was withheld from them by the Claimants, there was no meeting of the minds, and therefore no contract. Respondent, Prudential Securities, Inc. stated that this information was withheld from it, because Claimants hoped to receive a "windfall".

Claimants, Dave M. & Michelle Enriquez replied to the motion by alleging failure to supervise Mr. Gottuso is the true cause of action in this case, and that although they received a settlement from the partnership, Prudential Securities, Inc. owes them for interest, pain and suffering.

RELIEF REQUESTED

Claimants, Dave M. and Michelle Enriquez requested \$10,000.00 in actual damages, and for pain and suffering, plus interest.

Respondent, Prudential Securities, Inc. requested the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William R. Newsome, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 25, 1991 and by the Respondent on December 23, 1991.


And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant, Dave M. & Michelle Enriquez against Respondent, Prudential Securities, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, WILLIAM R. NEWSOME, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: June 24, 1992