



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald Morrow  
Resortville Inc.  
Donald Morrow IRA

PUBLIC

91-03241

Name of Respondent(s)

Prudential Securities Inc  
Joseph Antosh

REPRESENTATION

For Claimants: John M. Callaghan, Esq., a sole practitioner.

For Respondents: William H. Freilich, Esq. of Prudential Securities, Inc.

CASE INFORMATION

Statement of Claim filed October 15, 1991.

Claimants' Submission Agreements signed on: November 25, 1991.

Statement of Answer filed by Respondent Joseph Antosh on: January 23, 1992.

Respondent Joseph Antosh's Submission Agreement signed on: January 21, 1992.

Statement of Answer filed by Respondent Prudential Securities, Inc. ("Prudential") on: February 19, 1992.

Respondent Prudential Securities, Inc.'s Submission Agreement signed on: March 2, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions:      January 26, 1993 / Two Sessions  
                                         January 27, 1993 / Two Sessions  
                                         April 22, 1993 / Two Sessions  
                                         April 23, 1993 / One Session

Hearing Location: NASD offices located in New York City, New York.

**CASE SUMMARY**

Claimants alleged Claimant Donald Morrow informed Respondent Antosh that he had virtually no stock market experience and Claimants' primary concern was the security of investment, and that Respondent Antosh assured him that the investments he would select were guaranteed. Claimant Morrow further alleged that Respondents speculated in high risk investments that were not suitable for a pension fund or a person with Claimants' limited experience and knowledge; made unauthorized investments; made investments without adequately discussing the high risk involved or providing prospectuses and other information; evaded and ignored questions about the state of the accounts; repeatedly misrepresented the speculative nature of investments in the account and breached the fiduciary duty owed to Claimants. Claimant Morrow further alleged that Respondent Prudential Securities, Inc. had inadequate policies and procedures to prevent broker abuses such as those he was subjected to and failed to supervise Respondent Antosh.

Respondent Antosh maintained that it was improbable and surprising that Claimant Morrow would say that he had virtually no stock market experience. Respondent Antosh further maintained that Claimant Morrow agreed to the initial investments and had total knowledge, understanding and participation in the continued portfolio management; that there was no repeated misrepresentation; that statements were regularly provided to Claimant Morrow and that he did not speculate in high risk investments that were unsuitable for a pension account or the Claimants who allege limited knowledge and experience. Respondent Antosh further maintained every single purchase made in Claimants' accounts were explained and agreed to by Claimant Morrow and where necessary signed by Claimant Morrow before any transfer was effected and the Claimants' allegation as to ignoring and evading requests to discuss the status of the accounts is curious as he discussed the Claimants' accounts several times a year by phone and met personally at least once a year.

Respondent Prudential Securities, Inc. maintained that Claimants' claims were barred by the statute of limitations. Respondent Prudential further maintained that every investment made by Respondent Antosh was well suited to Claimants' investment objectives and level of sophistication; that Claimants have failed to adduce any evidence to support a claim of fraud; that Claimants were fully apprised of all transactions in their accounts in a regular and timely fashion; that Respondent Prudential did not stand in a fiduciary relationship to a prospective

purchaser; and that, even assuming Respondent Prudential did owe a fiduciary duty to Claimants, Respondent Prudential satisfied this duty and Claimants were appropriate and suitable for each of the investments they made.

### **RELIEF REQUESTED**

Claimants requested the following damages:

- a) an award that will reflect the investment of \$217,000.00 in a money market account in 1984, accumulated interest and a liquidation of the account in 1991.
- b) losses in the Keough account in the amount of \$28,000.00
- c) losses in the individual account in the amount of \$20,000.00
- d) punitive damages of no less than \$100,000.00
- e) reimbursement of all attorneys' fees, filing fees and costs associated with the filing of this arbitration matter.

Respondents Prudential Securities, Inc. and Joseph J. Antosh requested that the claim be dismissed in its entirety and that costs be awarded in its favor.

### **AWARD**

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

1. All claims be and hereby are dismissed in all respects.
2. The Claimants request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

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

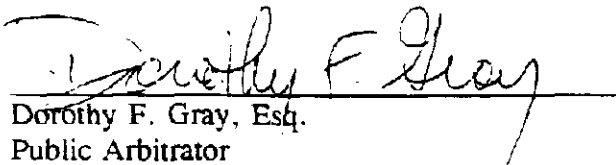
7 sessions x \$750.00 = \$5,250.00 minus Claimants' hearing session deposit of \$1,000.00  
= \$4,250.00 due.

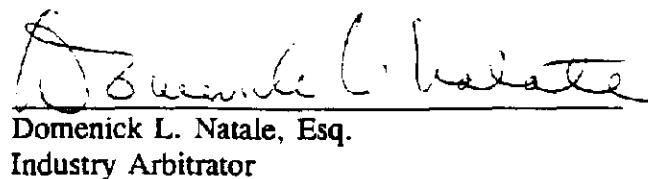
Forum Fees Assessed Against:

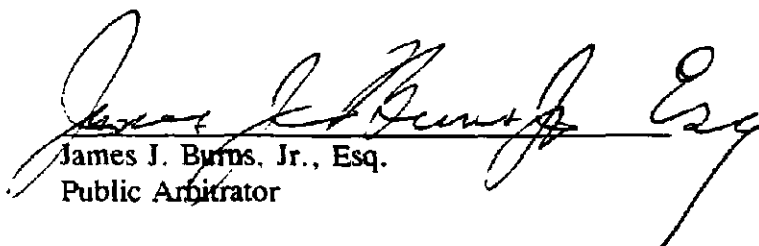
The Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$4,250.00 to represent forum fees.

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

ARBITRATORS' SIGNATURE

  
Dorothy F. Gray, Esq.  
Public Arbitrator

  
Domenick L. Natale, Esq.  
Industry Arbitrator

  
James J. Burns, Jr., Esq.  
Public Arbitrator

Decision Dated: May 25, 1993

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389  
SS:

STATE OF: NY

COUNTY OF: NY

On this 15 day of May, 1993, before me personally appeared **Dorothy F. Gray, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

[Signature]

STATE OF: New York

COUNTY OF: NEW YORK

SS:

On this 17 day of May, 1993, before me personally appeared **Domenick L. Natale, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

[Signature]

JOHN BRANDL  
Notary Public, State of New York  
No. 3024820  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires March 30, 1997

STATE OF: New York

COUNTY OF: Westchester

SS:

On this 17 day of May, 1993, before me personally appeared **John J. Burns, Jr., Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

[Signature]  
MARILYN V. GOLDBERG  
Notary Public, State of New York  
No. 60-1475915  
Qualified in Westchester County  
Commission Expires July 31, 1993