

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

E. L. Maytag

91-03481

Name of Respondents

Prudential-Bache Securities Inc.  
Dennis Gitlin

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**REPRESENTATION**

For Claimant, E.L. Maytag ("Maytag"): R. Lawrence Bonner, Esq. of Greer, Homer and Bonner, P.A.

For Respondents, Prudential Securities, Inc. ("Prudential") and Dennis Gitlin ("Gitlin"): Brian D. Elias, Esq. of Fowler, White, Burnett, Hurley et al.

**CASE INFORMATION**

Statement of Claim filed: November 5, 1991.

Claimant's Submission Agreement signed on: November 12, 1991.

Respondents, Prudential's and Gitlin's joint Statement of Answer filed: January 27, 1992.

Respondent, Prudential's Submission Agreement and Corporate Acknowledgment signed: December 20, 1991 by Kevin B. Frawley on behalf of the firm.

Respondent, Gitlin's Submission Agreement signed: December 20, 1991

**HEARING INFORMATION**

On March 9th, 10th, 11th, 12th and May 13th and 14th, 1993 hearings lasting eleven (11) sessions were held in Fort Lauderdale, Florida.

**CASE SUMMARY**

Claimant alleged that she is a single, divorced, unsophisticated investor and that when she opened her account with Prudential in September, 1985 through Respondent, Gitlin, an account executive with Prudential, she informed him that she was entrusting her entire account to him

as a professional and as a friend and that she wanted her funds to be invested in only conservative investments with an eye toward preservation of capital. Claimant further alleged that despite her stated investment objectives, Respondent, Gitlin, beginning in November of 1986, through various misrepresentations and omissions, duped her into investing in Prudential Energy Income funds, which were highly speculative, completely illiquid limited partnerships which were, unsuitable for her account. Claimant contended that Respondent, Prudential, failed to properly supervise its employee, Gitlin, and is therefore liable along with Gitlin for Claimant's losses.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that when Claimant opened her account with Prudential she advised Gitlin that she wanted her funds in investments which would provide steady income but that over a period of years Claimant consistently spent more money than her investments produced. Respondent further maintained that the investments were suitable for Claimant, that Claimant was provided with a prospectus and asked to carefully read it, and that Gitlin fully explained the nature of the investments including the fact that the limited partnerships were illiquid and that the income from the limited partnerships could fluctuate with the price of oil and gas. Respondents contended that the investments were made at the direction of Claimant and that Gitlin repeatedly recommended that Claimant diversify her portfolio but that Claimant consistently demanded that her funds be invested in something that provided high income.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$300,000.00, plus interest, punitive damages, costs and attorneys' fees.

Respondents requested dismissal of the Statement of Claim in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the commencement of the first hearing session, the Panel heard Respondents' Motion to Dismiss and Claimant's response thereto and denied said motion except as to the 10(b)-5 Claim.

#### **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. Respondents, Prudential and Gitlin, are found liable, jointly and severally, and, upon tender, by Claimant, of the investment at issue, (Prudential Energy Income Funds), shall pay to Claimant compensatory damages in the amount of \$95,516.61 plus interest, at the legal rate of 12% per annum, of \$113,152.00 for a total of \$208,668.61. Such interest is calculated from the respective purchase dates of investments P16 and P17, to wit: November 26, 1986 and February 27, 1987, through and including May 14, 1993, which interest shall accrue at the rate of \$12.67 per diem thereafter, pursuant to Florida Statute, 517, 211(2),(3)(a).
2. Respondents, Prudential and Gitlin, are also found liable, jointly and severally, to

Claimant for reasonable attorneys' fees, pursuant to Florida Statute 517.211(6), to be determined by a court of competent jurisdiction.

3. Claimant's request for punitive damages is hereby denied.
4. All other claims are denied.

#### OTHER COSTS

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

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees of \$8,250.00 (\$750.00 X Eleven (11) hearing sessions).

1. Claimant is hereby assessed forum fees of \$4,125.00 for which the NASD shall retain the \$3,750.00 previously paid by Claimant in partial satisfaction thereof leaving a balance due by Claimant to the NASD of \$375.00.
2. Respondents, Prudential and Gitlin, are hereby jointly and severally assessed forum fees of \$4,125.00 payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimant.

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

#### ARBITRATION PANEL

##### Concurring Arbitrators' Signatures

/s/

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Arthur J. Leibell, Esq.,  
(Public/Chairman)

/s/

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Allan J. Schneider, Ph.D  
(Public/Panelist)

/s/

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Nicholas A. Natale  
(Industry/Panelist)

Date of Award: July 9, 1993