

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Paul & Lois Franscella . Trustees

92-00215

Name of Respondents

Prudential Securities Inc  
Drew Sikorski

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REPRESENTATION

For Claimants: Phillip M. Marshall, Esq. of Kinney, Buch, Mattrey & Marshall.

For Respondent, Prudential Securities, Inc.: Paul K. Stecker, Esq. of Phillips, Lytle, Hitchcock, Blaine & Huber.

For Respondent, Drew Sikorski: Philip Raible, Esq. of Squadron, Elenoff, Plesent & Lehrer.

CASE INFORMATION

Statement of Claim filed: January 21, 1992

Claimants' Submission Agreement signed on: January 15, 1992.

Statement of Answer filed by Respondent, Prudential Securities, Inc. on: May 12, 1992.

Respondent, Prudential Securities, Inc.'s Submission Agreement signed on: May 8, 1992.

Statement of Answer filed by Respondent, Drew Sikorski on: April 16, 1992.

Respondent, Drew Sikorski's Submission Agreement signed on: March 3, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: December 9, 1992 - Two Sessions.  
December 10, 1992 - Two Sessions.

Hearing Location: Hyatt Regency - Buffalo, New York.

### CASE SUMMARY

Claimants allege that Claimant, Louis J. Frascella had a small account with Respondent, Prudential Securities Corp. ("Prudential") and that the account representative was Respondent, Drew Sikorski ("Sikorski"). Claimants allege when Louis J. and Paul C. Frascella's father (Helen M. Frascella's husband) suffered an incapacitating stroke, they created a trust for their parents' assets and were named as trustees. Claimants allege that Mr. Sikorski promised them that the trust account could make a lot of money and that it would be risk free. Claimants allege that Sikorski invested the portfolio largely into limited partnerships which were illiquid, unmarketable and of no readily ascertainable value.

Claimants allege that they did not receive a prospectus for any of the limited partnerships and were not even aware that the portfolio was invested in limited partnerships until they received K-1's. Claimants allege that Sikorski and Prudential breached their fiduciary duty to them and that they failed to act in good faith. Claimants allege that Sikorski and Prudential recommended unsuitable transactions to the Claimants and that the transactions were recommended for the purpose of generating commissions. Claimants allege that Prudential negligently, carelessly and recklessly failed to supervise their employee and allowed him to act in the manner stated above.

Respondent, Prudential, maintains that Claimants were experienced investors with a history of trading who were concerned with making money, not with preserving existing assets. Prudential maintains that the handled the account responsibly, professionally and in the Claimants' best interests. Prudential maintains that each investment was fully discussed with either or both of the Claimants before the purchases was made and that the Claimants were never promised a no-risk deal. Prudential maintains that Claimants received a prospectus in connection with each purchase which thoroughly discussed the risks of the transaction. Prudential maintains that each transaction was suitable for the Claimants' account.

Respondent, Sikorski, maintains that he and Claimant, Louis Frascella, had maintained an account with him for some time prior to the opening of the trust account. Sikorski maintains that Louis Frascella was pleased with his performance and recommended his services to others. Sikorski maintains that Louis Frascella transferred the trust account to Prudential because he was unhappy with the way it was being handled elsewhere. Sikorski maintains that the account consisted entirely of penny stocks. Sikorski maintains that he spoke to Claimants to discuss investment strategy and the Claimants' objectives were high yield, dividends, growth, long term ownership, limited price fluctuation and tax free status. Sikorski maintains that he recommended several different types of investments and that these recommendations were rejected. Sikorski maintains that he then recommended limited partnerships to Helen Frascella and had discussions at great length about the risks involved with the transaction but that Helen Frascella liked the investment. Sikorski denies that his conduct was inconsistent with his ethical and professional responsibilities.

**RELIEF REQUESTED**

Claimants requested damages in the amount of \$141,169.00, interest to the date of the award, punitive damages in the amount of \$50,000.00, costs, and reasonable attorney's fees.

Respondent, Prudential, requested that the Claim be dismissed and that they be awarded the costs and expenses of this arbitration, including attorney's fees.

Respondent, Sikorski, requested that the Claim be dismissed and that the costs of the proceeding be assessed against the Claimants.

**OTHER ISSUES CONSIDERED & DECIDED**

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 undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent, Prudential Securities, Inc. is hereby liable and shall pay to the Claimant the amount of \$25,000.00 plus interest at the rate of 9% from the date of filing until the payment of the award. Claimants are directed to return the limited partnership interests to Prudential.
- 2) Respondent, Drew Sikorski, is hereby liable and shall pay to the Claimants the sum of \$3,000.00 plus interest at the rate of 9% from the date of filing until the payment of the award.
- 3) Respondent, Prudential Securities Corporation is hereby re-imburse the Claimant forum fees in the amount of \$950.00 that Claimant previously deposited with the NASD, Inc. as detailed below.

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- 4) The Claim for punitive damages is hereby denied.
- 5) Each party shall bear their own costs of this action, including attorney's fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

\$200.00	Non-refundable filing fee
\$3,000.00	Hearing Fees (\$750 x 4 sessions)

- 1) Total forum fees in the amount of \$3,200.00 are hereby assessed against the Respondent, Prudential Securities, Inc.
- 2) As directed above, Prudential shall re-imburse to Claimants previously paid filing fees of \$950.00
- 3) Prudential is directed to pay the balance of \$2,250.00 to the NASD, Inc.

Concurring Arbitrator's Signature  
Name

Industry Arbitrator

Maryann Yadon  
Maryann Yadon

Date of Decision: January 21, 1993

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- 4) The Claim for punitive damages is hereby denied.
- 5) Each party shall bear their own costs of this action, including attorney's fees.


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Concurring Arbitrator's Signature  
Name

  
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Vincent J. Muffolo

Public Arbitrator

Date of Decision: January 21, 1993

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Concurring Arbitrator's Signature  
Name

Public Chairperson

  
Robert Gleichert, Esq.

Date of Decision: January 21, 1993