

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Andrea Konig

and

Name of Respondent

Prudential Securities, Inc.

JAN 19 1993

ARBITRATION CHICAGO

92-00518

REPRESENTATION OF PARTIES

Claimant Andrea Konig was represented by Stuart C. Goldberg, Esq., Austin, Texas and Stephen J. Grubiss, Esq. of Grubiss & Grubiss, Boulder, Colorado.

Respondent Prudential Securities, Inc. was represented by Charles F. Brega, Esq. and Wesley A. Howard, Esq. of Brega & Winters, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about February 11, 1992. Claimant Andrea Konig's Submission Agreement was signed on February 4, 1992.

Statement of Answer was filed by Respondent Prudential Securities, Inc. on or about August 10, 1992.

HEARING INFORMATION

The hearing was held on Wednesday, December 16, 1992 for two (2) sessions, Thursday, December 17, 1992 for two (2) sessions and Friday, December 18, 1992 for two (2) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimant Andrea Konig ("Claimant") alleged that Respondent Prudential Securities, Inc. ("Respondent") improperly recommended unsuitable investments and negligently managed her two (2) accounts in connection with the purchase of six (6) limited partnerships. The circumstances leading to the allegations are as follows.

Upon the untimely death of her husband, Claimant received \$300,000.00 in life insurance policy proceeds. Subsequently, the Claimant met with Calvin Achey ("Achey"), a broker employed by the Respondent, and expressed her

investment objectives of safety, income and liquidity. Nevertheless, Claimant asserted that Achey recommended high-risk, illiquid limited partnerships, that Achey misrepresented Claimant's financial condition on account forms in order to secure the purchases, and falsely assured her that one of the limited partnerships could be liquidated in full.

At issue are two (2) brokerage accounts that Claimant maintained at Respondent's Greeley, Colorado branch office. Claimant's regular account consisted of the following five (5) limited partnership investments: Fogleman Secured Equity LP-1, Jones Intercable Fund 14-B, Polaris Aircraft Income Fund 4, Pru-Bache Energy Growth Fund 4, and Pru-Bache Energy Income Fund P-22. Claimant's IRA account consisted of the Pru-Bache Energy Income Fund P-22 limited partnership. Both of the accounts were opened in May of 1988 and continued until June 1, 1992.

When Claimant attempted to liquidate the Fogleman Security Equity LP-1 in 1991, she learned there was no "buy-back" option, contrary to Achey's representations. Further, despite efforts such as letters of complaint and written demands for liquidation in order to obtain emergency monies, Respondent refused to liquidate the limited partnerships or compensate Claimant for alleged losses. As a result of Respondent's alleged unsuitable investment advice, refusal to liquidate, and "stonewalling" of requests for restitution, and subsequent monetary losses, Claimant asserted the following legal claims:

- 1) Unsuitable investment recommendations,
- 2) Negligence and misstatements,
- 3) Breach of contract,
- 4) Breach of fiduciary duty,
- 5) Common law fraud,
- 6) Conversion through non-restitution, and
- 7) Conduct warranting punitive damages..

In its Statement of Answer, Respondent denied each and every material allegation contained in the Statement of Claim. Respondent asserted that Claimant was fully aware of all investment alternatives and was adequately informed by Achey as to risks. Specifically, Respondent asserted that Claimant a) failed to state a cause of action upon which relief may be granted, b) failed to mitigate damages, c) improperly included excessive interest in her damages calculation, d) unjustifiably relied on Achey's and/or Respondent's statements, and e) barred her breach of contract claim through her own breach of contract and/or fraudulent misrepresentations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$202,777.85 as compensatory damages, \$304,166.77 as fraud damages, treble damages, pre-judgment interest and for such other and further relief as the arbitrators may deem just, fair, reasonable and in the interests of justice.

Respondent requested that the claims be dismissed with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

At the opening of the hearing of this matter, Respondent Prudential Securities, Inc. filed a motion to dismiss those claims involving securities which are subject to class action litigation. Respondent Prudential Securities, Inc. based its motion on Section 12(d) of the NASD Code of Arbitration Procedure. After hearing the arguments of the parties and representations by Claimant's counsel that the claimant will or has opted out of the subject class actions the panel proceeded with the hearing. The Claimant testified that she will opt out of any class actions filed regarding the securities at issue in this proceeding. The panel's determination herein is predicated upon that representation.

Respondent Prudential Securities, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

AWARD

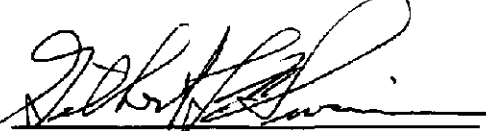
After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the Claimant Andrea Konig the sum of \$168,766.00 (one hundred sixty eight thousand seven hundred sixty six dollars).
2. no punitive damages are awarded herein.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$700.00 previously deposited with the NASD by the Claimant. Respondent Prudential Securities, Inc. shall pay to the NASD the sum of \$5,300.00 as additional forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.



Gilbert L. MacSwain, Esq.
Presiding Chair
Public Arbitrator

Dated:

January 12, 1993

John L. Worcester
Public Arbitrator

Eugene M. Osen
Industry Arbitrator

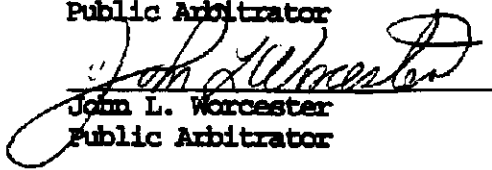
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1-11-93

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Public Arbitrator

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Eugene M. Osman
Industry Arbitrator

Jan 11, 1993