

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Thelma A. Bellio

92-01053

Name of Respondents

Prudential Securities Inc  
Melvin Harris

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on March 25, 1992, Claimant Thelma A. Bellio, who appeared Pro Se, alleged that Respondent Prudential Securities, Inc., through its registered representative, Respondent Melvin Harris, made misrepresentations regarding the type of IRA investment she was purchasing, causing her to invest in a security that was unsuitable for her needs. The Claimant further alleged that because her balance continued to shrink she decided to close the account at a loss, and that the Respondents should be held liable for the loss she has suffered.

Respondents Prudential Securities, Inc. and Melvin Harris, through their in-house counsel, Patricia A. Fitzpatrick, Esq., maintained that the purchases made in her account were entirely appropriate for her situation and needs. The Respondents also maintained that any losses that the Claimant sustained are attributable to market conditions and is not the result of any misconduct by either Respondent.

**RELIEF REQUESTED**

Claimant Thelma A. Bellio requested \$1,800.00 in actual damages.

Respondents<sup>†</sup> Prudential Securities, Inc. and Melvin Harris requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David A. Townsend, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 17, 1992, by the Respondent Prudential Securities on May 12, 1992 and by the Respondent Melvin Harris on May 12, 1992.

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 Thelma A. Bellio against Respondents Prudential Securities, Inc. and Melvin Harris are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, DAVID A. TOWNSEND, ESQ., 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: April 20, 1993

### REPORT OF ARBITRATOR

I have reviewed the file and made the following findings of fact. The Claimant alleged that she transferred an IRA fund to Prudential Bache Securities "sometime" in the year 1988, in an amount of \$3,066.74. However, the statement which she provides is a statement from Prucro Securities Corporation, dated February 25, 1987. The Defendant alleged that the transferred IRA account totalled \$2,851.26 and provides a statement covering the period of February 1 to March 31, 1988, indicating that to be the starting balance. Though that statement also indicates that there was a previous statement dated January 1, 1988, the Arbitrator is compelled to conclude, based upon the documentation provided, that the starting amount is as alleged by the Respondents.

It would appear that the Claimant's allegation of loss, \$1,800.00, as opposed to the Respondents' allegation of loss, \$1,500.00, is explained by this discrepancy in the starting balance and that the Respondents' allegation of loss, is, therefore, that which is relied upon by the Arbitrator.

The Claimant's allegation of loss is essentially that the Broker was negligent in his choice of investments because they were not "safe" and/or a loss was incurred.

The Respondent indicates, alleges, and supports it with competent documentation, that approximately \$100.00 was lost as a result of a decline in the share price of the MFS Intermediate Income Trust holdings by 1/8th. The holding had been closely monitored by the Broker and sold quickly when it appeared that it was appropriate to sell the holding. The Arbitrator is not able to perceive any grounds for negligence, nor after having reviewed the prospectus, any grounds for supposing that the investment was an inappropriate one for the Petitioner's purposes.

The next loss of approximately \$500.00 occurred as a result of the purchase of VMS Mortgage Investment Fund. The Respondent correctly points out that Mrs. Bellio is a member of the class of VMS Shareholders who will be recovering from pending litigation in the Northern District of Illinois. Whether any eventual loss will result as a consequence of that settlement would make a decision on that issue moot even if it were an issue that could be resolved in this forum, and it is not.

The largest loss, \$904.50, was realized in January of 1990, on the sale of common stock in Grossman's, Inc. The record reflects that this was a purchase urged by Mrs. Bellio because she has been unsatisfied with the rate of return on her account up to that date.

The Respondents attribute the loss to a major decline or "mini-crash" occurring on October 14, 1989, approximately 2 1/2 to 3 months prior to the sale and realization of the loss. An examination of the account file indicates that the bulk of the loss occurred in September and

October of 1989, over a relatively short period of time and coincided with a general decline in the overall market.

Consequently, this loss, the largest portion of the Petitioner's claim, is explained in a manner which does not suggest any negligence on the part of the Broker.

In Summation, while it is regrettable that Mrs. Bellio has suffered a loss in the course of her endeavor to prudently invest the proceeds of her IRA account, the Arbitrator is unable to detect any grounds upon which it might be said that that loss occurred as a consequence of any negligence on the part of the Respondents. On the contrary, there is evidence to indicate that the Broker did respond in a timely fashion throughout the tenure of this account when circumstances dictated a portfolio change. The Respondents cannot be held responsible for losses which result as a consequence of severe swings in the market. This is a risk that is ever present and one which must be borne by the investor, who, in this case, exercised the ultimate word as to any changes which were made in the portfolio. The Arbitrator is compelled to find for the Respondents.

  
Signature of Arbitrator