

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Frederick R. and Hilda S. Huntress

92-01228

Names of Respondents

Prudential-Bache Securities Inc., n/k/a
Prudential Securities, Inc.. Michael Marsh
and William Sellens

REPRESENTATION

Claimants were represented by Charles R. Hoover, Esq. of Phoenix, Arizona.

Respondents were represented by Jesse B. Simpson, Esq. and Margaret R. Russell, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 7, 1992.

Claimant's Submission Agreement was signed on March 25, 1992.

A Joint Statement of Answer was filed with the NASD by Respondents, Prudential-Bache Securities, Inc. and William G. Sellens on May 4, 1993.

A separate answer was filed with the NASD by Respondent, Michael Marsh on May 4, 1993.

Respondent, Prudential-Bache Securities, Inc.'s Submission Agreement was signed on May 4, 1993 by John H. Chung, Senior Vice President, Prudential Securities, Inc.

Respondent, William G. Sellens' Submission Agreement was signed on

May 5, 1993.

Respondent. Michael Marsh did not file an executed Submission Agreement with the NASD.

HEARING INFORMATION

The hearing dates were December 14, 1993 for two (2) hearing sessions, December 15, 1993 for two (2) hearing sessions, December 16, 1993 for three (3) hearing sessions and December 17, 1993 for two (2) hearing sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimants, Frederick and Hilda Huntress, ("Claimants") alleged causes of action against Respondents, Prudential-Bache Securities, Inc., n/k/a Prudential Securities, Inc. ("Prudential"), Michael Marsh ("Marsh") and William G. Sellens ("Sellens") for violations of the Federal Securities laws, the Arizona Securities law, the Colorado Securities law, common law fraud, breach of fiduciary duty, the Arizona Rico Statute, breach of contract, negligent misrepresentation, violations of the tax laws, negligence, negligent supervision, and breach of various self regulatory organization rules.

These causes of action were asserted in connection with the purchase and/or sale of various securities in the Claimants, account including, but not limited to, Burlington Holdings Inc. Series B Junior Discount Debentures, Blackstone Income Trust Incorporated, West Point Pepperell, VMS Mortgage Investors L.P. II, DR. Pepper/Seven Up Companies, Inc. Senior Subordinated Discount Notes, Polaris Aircraft Income Fund IV ("Polaris") and Prudential-Bache Energy Income Partnership Series V ("Energy Income"). Claimants alleged that they were given incorrect tax advice, that their instructions concerning the handling of their account were not followed, that agreements made between them and their broker were not followed, that investments made for Claimants were ill suited for them and that many of the investments listed above were misrepresented to Claimants in that material facts were omitted from disclosure.

Specifically, Claimants alleged that Sellens advised them that the Polaris and Energy Income partnerships were represented as having a high rate of return without an increase in risk, that they could be exchanged for Prudential-Bache

mutual funds and that they could be cashed in at or near net asset value. In addition, the partnerships were carried on the Claimants' monthly account statements at their purchase price for many months until December of 1991 when the real valuation of the assets was disclosed to Claimants. Additionally, Claimants incurred substantial tax liability as a result of the sale of the existing positions in their account upon its transfer to Prudential. Claimants also alleged that sales occurred in their account prior to the transfer from Northern Trust to Prudential.

Prudential and Sellens alleged that the allegations of the claim were nothing more than an attempt to blame someone else for Claimants' failure to obtain tax advice from a qualified tax advisor as Sellens had suggested, and for losses incurred in the account for investment decisions they made which were not as profitable as they had hoped.

Prudential and Sellens alleged that the prospectuses for the partnerships clearly disclosed that they were not liquid investments and the risks inherent in the investments including the risks that the underlying investments would not perform well and the investors would suffer related losses. Additionally, Prudential and Sellens alleged that all purchases and sales of securities in Claimants' account were authorized and that all securities purchased for Claimants account were suitable. Prudential and Sellens also asserted that the claims for punitive, exemplary damages and treble damages and attorneys' fees were not available under the applicable law. Prudential and Sellens argued that the parties' contract cited New York law as controlling and under this theory, extraordinary relief was not available to Claimants. Lastly, Prudential and Sellens asserted that Claimants ratified the actions of Prudential and Sellens by failing to object to any of the transactions upon receipt of confirmations.

Marsh requested that the claim be dismissed as to him because there was no factual basis asserted in the claim to support any wrongdoing by him in regard to Claimants. Additionally, Marsh asserted that he was never properly served with the Claim because the NASD attempted service on him at Prudential and he had terminated his employment with Prudential more than two years before the Statement of Claim was mailed to Prudential.

RELIEF REQUESTED

Claimants requested compensatory damages of \$235,297.14 and treble damages for a total damage request of \$705,891.42, interest, punitive damages under Arizona law, exemplary damages, attorney's fees, costs and such other relief as the panel deemed just under the circumstances.

Prudential, Sellens and Marsh requested dismissal of the claim in its entirety.

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.

Respondent, Marsh is required to arbitrate the instant dispute in accordance with Section 12 of the NASD Code of Arbitration Procedure despite his failure to file an executed Submission Agreement with the NASD. Accordingly, Marsh will be bound by the panel's determination on all issues submitted for determination.

At the beginning of the hearing on December 14, 1993, counsel for Claimants and counsel for Respondents announced to the panel that Respondent, Marsh had been dismissed as a party to the arbitration proceeding. In addition, the parties agreed that the respective spouses of Sellens and Marsh, named under the community property law of Arizona, were dismissed from the proceeding. Accordingly, Prudential and Sellens were the only Respondents in this matter.

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. The Claimants' claims asserted against Prudential and Sellens are dismissed in their entirety; and,
2. The parties shall each bear their own costs, expenses and attorneys' fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The Forum Fees are split equally among the parties. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit previously paid to the NASD by Claimants. Prudential is assessed additional Forum Fees in the amount of \$4500.00 and Claimants are assessed additional Forum Fees in the amount of \$3500.00. Forum Fees were assessed on the basis of \$1000.00 per hearing session for nine (9) hearing sessions.

Additional Forum Fees assessed to the parties are payable to the NASD.

Concurring Arbitrators' Signatures
Name

<u>/S/ Charles B. Melby</u>	<u>December 31, 1993</u>
Charles B. Melby, Esq.	Dated
Presiding Chairperson	
Public Arbitrator	

<u>/S/ George N. Roy</u>	<u>January 5, 1994</u>
George N. Roy	Dated
Panelist	
Public Arbitrator	

<u>/S/ Bruce Genthner</u>	<u>January 3, 1994</u>
Bruce Genthner	Dated
Panelist	
Industry Arbitrator	

Date award served on the parties by the NASD: January 10, 1994