

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Walter J. Morrison & Mary D. Morrison

92-01290

Name of Respondents

Prudential Securities Inc
Josef A. Stark

REPRESENTATION

For Claimants: Mitchell H. Cobert, Esq.

For Respondent, Prudential Securities, Inc.: Marc S. Dobin, Esq., of Prudential Securities, Inc.

For Respondent, Josef A. Stark: Josef A. Stark appearing pro se.

CASE INFORMATION

Statement of Claim filed: May 4, 1992.

Claimant, Walter J. Morrison's Submission Agreement signed on: April 7, 1992.

Claimant, Mary D. Morrison's Submission Agreement signed on: April 7, 1992.

Statement of Answer filed by Respondent Prudential-Bache Securities on: March 1, 1993.

Respondent, Prudential Securities Inc.'s Submission Agreement signed on: February 23, 1992.

Statement of Answer filed by Respondent, Josef A. Stark on: December 3, 1992.

Respondent, Josef A. Stark's Submission Agreement signed on: December 30, 1992.

HEARING INFORMATION

Pre-Hearing Conference: April 7, 1993/One session

Hearing Date/Sessions: May 17, 1993/Two sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimants allege that they invested in the VMS Mortgage Investment fund program("VMS") based upon a recommendation made by Respondent Josef A. Stark("Stark"). Claimants further allege that, in order to induce Claimants to invest in VMS, Respondent Stark knowingly or recklessly misrepresented and willfully omitted certain material facts in violation of N.J.S.A. 49:3-71. Claimants also allege that, to the best of their recollection, they did not receive any VMS prospectus until after the investments had been made in violation of N.J.S.A. 49:3-71(a)(2), 49:3-52 and 49:3-53(d). Claimants also allege that they are unsophisticated investors and that VMS was unsuitable and inappropriate for Claimants' investment objectives. Claimants further allege that Respondent Prudential Securities, Inc.("Prudential") is responsible for the actions of Respondent Stark under the doctrine of respondent superior and as a "control person" and that Respondents' actions were negligent, fraudulent and in violation of Sections 1, 2, 18 and 27 of Article III of the NASD Rules of Fair Practice.

Respondent Prudential maintains that Claimants are yield-oriented investors and that VMS was designed to be an investment for yield-oriented investors. Respondent Prudential also maintains that Claimants had prospectuses in their possession from the date of the first trade and that the prospectus contains the information that the Claimants allege was not disclosed to them. Respondent Prudential further maintains that Claimants did nothing to mitigate their damages.

Respondent Stark maintains that Claimants' objective was income and tax-sheltered income. Respondent Stark further maintains that, in keeping with Claimants' income objective, he recommended VMS as a suitable income investment due to the fact that Respondent Prudential considered the fund suitable for IRA's, pension plans and individual investors. Respondent Stark also maintains that VMS Realty and Respondent Prudential are the subject of extensive litigation based on incomplete or inaccurate due-diligence.

RELIEF REQUESTED

Claimants requested damages in the amount of \$183,699.62, plus, punitive damages and costs, including attorneys' fees.

Respondent Prudential Securities, Inc. requested that the claim be dismissed in its entirety.

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OTHER ISSUES CONSIDERED & DECIDED

Claimants indicated at the hearing that they settled their claims against Prudential Securities. In Therefore the hearing proceeded against Josef A. Stark. only.

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 claim is hereby denied in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorney fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees : assessed.

\$200.00	Non-refundable filing fee.
\$300.00	Pre-hearing conference fee.
\$1,500.00	Hearing session fees(2 Sessions X \$750)

- a) Total forum fees in the amount of \$2,000 are hereby assessed against the Claimants. Walter J. Morrison and Mary D. Morrison. Claimants are entitled to offset this amount with the \$950.00 previously deposited with the NASD, Inc. Claimants are directed to pay the balance of \$1,050.00 to the NASD, Inc.

Concurring Arbitrator's Signature
Name


James M. Baumann, Esq.

Public Chairperson

Date of Decision: June 21, 1993

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**STATE OF NEW YORK
COUNTY OF**

S.S.:

On this 14 day of June, 1993, before me personally appeared James M. Baumann known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 62-4886360
Qualified in Suffolk County
Commission Expires April 16, 1994

OTHER ISSUES CONSIDERED & DECIDED

Claimants indicated at the hearing that they settled their claims against Prudential Securities, Inc. Therefore the hearing proceeded against Josef A. Stark. only.

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:

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- a) Total forum fees in the amount of \$2,000 are hereby assessed against the Claimants, Walter J. Morrison and Mary D. Morrison. Claimants are entitled to offset this amount with the \$950.00 previously deposited with the NASD, Inc. Claimants are directed to pay the balance of \$1,050.00 to the NASD, Inc.

Concurring Arbitrator's Signature
Name


Christopher Lometti. Esq.

Public Arbitrator


Date of Decision: June 21, 1993

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**STATE OF NEW YORK
COUNTY OF**

S.S.:

On this 14th day of June, 1993, before me personally appeared Christopher Lometti known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JOAN H. WALTER
Notary Public, State of New York
No. 31-4910320
Qualified in New York County
Commission Expires October 5, 1993

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OTHER ISSUES CONSIDERED & DECIDED

Claimants indicated at the hearing that they settled their claims against Prudential Securities, Inc. Therefore the hearing proceeded against Josef A. Stark, only.

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 claim is hereby denied in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorneys' fees.

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Concurring Arbitrator's Signature
Name


Robert L. Bott

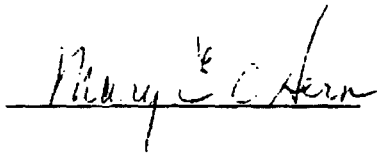
Industry Arbitrator

Date of Decision: June 21, 1993

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STATE OF NEW YORK S.S.:
COUNTY OF *NY*

On this *11* day of June, 1993, before me personally appeared Robert L. Bott known and know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARY E. O'HERN
Notary Public, State of New York
No. 4745840
Qualified in New York County
Commission Expires November 30, 19 *93*