

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Alicia Morris

vs.

Case #  
92-01593

Name of Respondent

Prudential Securities Inc

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**REPRESENTATION**

For Claimant: Seth E. Lipner, Esq. of Deutsch & Lipner

For Respondent: Gerald Kowlaski, Esq., Prudential Securities Inc.

**CASE INFORMATION**

Statement of Claim filed: May 7, 1992

Claimant's Submission Agreement signed on: May 5, 1992

Amended Statement of Claim filed: August 27, 1992

Statement of Answer filed by Respondent on: December 7, 1992

Respondent's Submission Agreement signed on: February 2, 1993

**HEARING INFORMATION**

Hearing Dates/Sessions:            May 25, 1993    -   Two sessions  
   June 16, 1993    -   Two sessions

Hearing Location: Offices of the NASD located in New York City, N.Y..

**CASE SUMMARY**

Claimant seeks to recover damages based upon the following theories: common law fraud and misrepresentations; breach of fiduciary duty; negligence and negligent supervision; breach of contract; and unsuitability.

Claimant stated that she is a 48 year old widow and that when her husband died in 1983, she sought financial advice to her husband's stockbroker, Michael Notter. Claimant alleged that she informed Notter that safety of principal was her primary goal. Claimant maintained that she told Notter that she needed income on which to live. Claimant further alleged that the material omissions and misrepresentations made by Notter were fraudulent and in violation of state and federal law.

Respondent denied each and every substantive allegation in the statement of claim. Respondent alleged that Claimant represented that she had 10 years of prior investment experience with stocks and bonds and was well aware of the risks associated with investing. Respondent further alleged that Claimant emphasized that her primary objective was "long term growth" and that the recommended investment vehicles adopted by Claimant were in accordance with her level of investor sophistication. Additionally, Respondent maintained that its supervision of Claimant's account was appropriate and sufficient to have reasonably detected any inconsistencies in the servicing of Claimant's account. Further, Respondent maintained that Claimant received monthly statements and confirmations on each trade and was at all times able to follow her account.

Respondent asserted as an affirmative defense that Claimant knew and was aware of the risks associated with this investment and voluntarily chose to assume those risks. Respondent further asserted that any losses sustained by Claimant is attributable to market conditions and to her own investment decisions, not to any action or inaction on the part of Respondent. Respondent asserted 18 affirmative defenses.

#### **RELIEF REQUESTED**

Claimant requested damages of \$25,486.12 on the Mass. Financial High Income Trust in her personal account plus interest at the legal rate of 9% from the date of liquidation until the date of the award; \$15,547.45 for the lost interest on the IRA account plus the legal rate of interest on that loss from January 26, 1990; with regard to the proprietary limited partnership investments, Claimant requested rescission based upon the fraud that was committed against her; alternatively, Claimant requested damages sufficient to compensate her for the capital losses suffered on these limited partnerships.

Respondent requested that the Statement of Claim be dismissed, that Claimant be required to pay all filing fees and forum fees, and that Claimant be ordered to reimburse Respondent for its reasonable expenses, including attorney's fees sanctions and costs incurred in connection with the defense of these claims.

**AWARD**

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

1. The Claimant's claims be and hereby are dismissed in all respects;
2. Each party shall bear their respective cost's, including attorney's fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against the Claimant.

Non-refundable filing fee - \$100.00

5 sessions X \$400 per session = \$2,000 minus hearing session deposit of \$950.00 = net \$1,150.00 due.

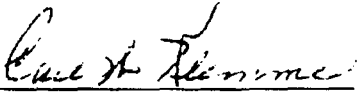
Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

Dorothy F. Gray, Esq.	-	Public Chairperson
Carl W. Klemme, VP	-	Public Panelist
Michael T. Curley	-	Industry Panelist

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Concurring Arbitrator's Signature  
Name

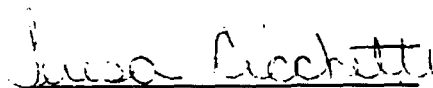
  
Carl W. Klemme. VP

Date of Decision: July 26, 1993

STATE OF NEW YORK  
COUNTY OF

S.S.:

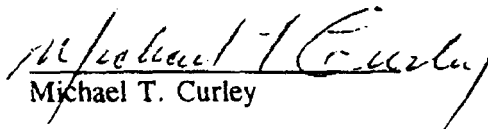
On this       day of July, 1993, before me personally appeared Carl W. Klemme known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



TERESA CICHETTI  
Notary Public, State of New York  
No. 4971574  
Qualified in Suffolk County  
Commission Expires Sept. 4, 1994

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Concurring Arbitrator's Signature  
Name

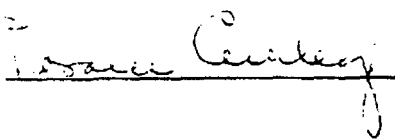
  
Michael T. Curley

Date of Decision: July 26, 1993

STATE OF NEW YORK  
COUNTY OF ~~Queens~~

S.S.:

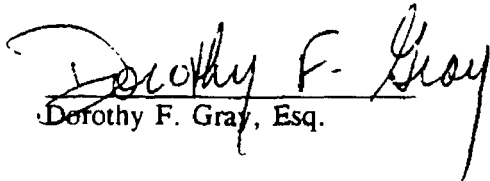
On this 21<sup>st</sup> day of July, 1993, before me personally appeared Michael T. Curley know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
Rosalie Curley

ROSALIE CURLEY  
NOTARY PUBLIC, State of New York  
No. 41-4896179  
Qualified in Queens County  
Commission Expires JAN 31 1994

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Concurring Arbitrator's Signature  
Name

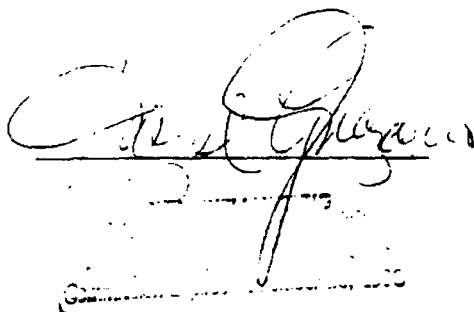
  
Dorothy F. Gray, Esq.

Date of Decision: July 26, 1993

STATE OF NEW YORK  
COUNTY OF NY

S.S.:

On this 25 day of July, 1993, before me personally appeared Dorothy F. Gray know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

  
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Arbitrator