

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dean Bowden,
Trustee of the Dean and Faye Bowden Trust

vs.

NASD #92-01779

Name of Respondents

Gerald Doyle
Prudential Securities, Inc.

REPRESENTATION

For Claimant: Jeff Dennis Ferentz, Esq., Greenbaum & Ferentz, Newport Beach, California

For Respondents: Robert H. Logan, Esq., Keesal, Young & Logan, Long Beach, California

CASE INFORMATION

Statement of Claim filed: May 28, 1992

Claimant's Submission Agreement signed: June 9, 1992

Statement of Answer filed by Respondents: October 13, 1992

Counterclaim filed: September 21, 1993

Claimant's Answer to Counterclaim filed: October 18, 1993

Respondents' Submission Agreements signed on: November 15, 1992 by Respondent Prudential. Respondent Gerald (Gerard) Doyle did not file a Submission Agreement, but filed an Answer and appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): None

Hearing Date/(Sessions): October 18, 1993 - (2)
 October 19, 1993 - (2)
 December 11, 1993 - (2)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged: intentional misrepresentation, unsuitability, omission of material facts, unauthorized trading, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing and violation of New York Stock Exchange Rule 342 in the purchase of mutual funds and real estate partnerships. Claimant had no prior securities investment experience. Respondent Gerald Doyle (Doyle) solicited Claimant's business in May of 1988, offering him special treatment in return for moving his account to Prudential Securities, (Prudential) including lower margin rates, rescission of commissions on "anything that doesn't work out" and safe yields of 12% to 20%. Claimant warned Doyle that this was all the cash he had, was for retirement and capital losses were not acceptable. Based on Respondents' offers and assurances, Claimant moved his account to Prudential and Doyle.

In November of 1988 Claimant noticed his net worth declining and in January of 1989 met with the manager of the Prudential La Jolla office, Kevin Hoyle (Hoyle). Mr. Hoyle reassured Claimant that his situation was only temporary. Claimant requested another meeting on March 30, 1989 to discuss his losses. Dr. Michael Axelrod, Senior Vice President - Investments, concluded the investments were unsuitable. As a result of this meeting Claimant requested, in a March 1989 letter, rescission of all purchases, or in the alternative, immediate liquidation of the account for cash with no commission charges. The account was liquidated but there was no direct answer to his letter until November, wherein Respondents' Assistant General Counsel placed the blame for the losses squarely on Claimant.

Respondents denied each and every allegation contained in the Statement of Claim and alleged: Claimant and his wife opened an account with Prudential in June of 1988 and stated they had a net worth, exclusive of family residence of \$12 million and an estimated liquid net worth of \$2 million. They also told Doyle they had five years of investment experience and that Claimant was the president of Seapoint Management Company. He stated he needed "at least \$20,000 per month for living expenses" Doyle explained that it was impossible to sustain his principal of \$1,300,000 and withdraw \$240,000 per year without investing in higher risk investments. Claimant stated he was willing to assume the market risks associated with more volatile investments.

Claimant further represented he has a stock broker's license and requested a margin account be opened. Prior to making any investments, Claimant discussed at length with Doyle the options available. All decisions were ultimately made by Claimant prior to the purchase of any product.

He received confirmations for every transaction, monthly statements and activity letters. In a January 17, 1989 meeting with Hoyle in which Claimant voiced his concerns over losses, his objectives were confirmed and it was explained that he had continued to withdraw \$20,000 a month. Dr. Axelrod subsequently explained to Claimant that he had a fairly diversified portfolio and with the monthly withdrawals, the capital erosion was not unexpected.

Respondents alleged a counterclaim for monies had and received due to the inadvertent crediting of 95,697 shares of Franklin Age High Income Fund to their account. The Claimants received dividend distributions on these shares which should have been received by Prudential. On September 15, 1988, Prudential debited the Bowdens' Prudential account in the amount of \$3,445.09 to adjust for dividend distribution which should have been received by Prudential.

Claimants denied the allegations of the counterclaim and alleged the bar of applicable statute of limitations, unclean hands, laches, waiver and estoppel.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$304,641.75, plus commissions in an amount to be proven before hearing;
2. Pre-award and post-award interest at the maximum rate allowed by law, dating from the original investment;
3. Cost of arbitration;
4. Punitive damages.

Respondents' counterclaim requested compensatory damages of \$3,445.09, plus interest at the legal rate from October 5, 1988.

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.

Respondents' request to file a counterclaim was granted at the hearing.

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. All claims are dismissed;
2. The claim for punitive damages is dismissed;

3. Respondents' counterclaim is dismissed;
4. The parties shall each bear their respective attorney's fees;
5. The parties shall each bear their respective costs.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$750 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Respondent Prudential Securities in the amount of \$2,250;
Claimant in the amount of \$2,250, minus \$750 already paid as a hearing deposit,

calculated as follows: six hearing sessions at \$750/hearing session, equals \$4,500, minus \$750 already paid by the Claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers.

ARBITRATION PANEL

<u>Name</u>	<u>Public/Industry</u>
Harvey C. Flodin, Esq.	Public
Jeanne C. Stilwell	Industry
William D. Randolph	Public

Concurring Arbitrators' Signatures

Jeanne C. Stilwell

Served: 01/10/94

Date of Decision: 12-29-93