

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard M. Elliot, as Trustee of the
Elliot Family Trust

92-01931

Name of Respondent

Prudential Securities Incorporated

REPRESENTATION

For Claimant: Richard M. Elliot, as Trustee of the Elliot Family Trust, appeared pro se.

For Respondent: Prudential Securities Incorporated was represented by Gabriel Loubier, Esq.
of Prudential Securities Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed: June 9, 1992.

Claimant's Submission Agreement signed on: April 28, 1992.

Respondent Prudential Securities Incorporated's Statement of Answer and Motion to Dismiss
filed: August 4, 1992.

Claimant's Response to Motion to Dismiss filed: August 26, 1992.

Respondent's second Motion to Dismiss filed: March 8, 1993.

Claimant's response to second Motion to Dismiss filed: March 9, 1993.

Respondent's reply to Claimant's response to Motion to Dismiss filed: March 9, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: March 16, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Richard M. Elliot, as Trustee of the Elliot Family Trust ("Elliot") alleged that Respondent Prudential Securities Incorporated ("Prudential") misrepresented or omitted the ratings of zero coupon bonds bought for his children's trust fund. Claimant specifically alleged that:

1. In May, 1985, Elliot sent \$30,000 to be invested based upon Prudential's specific recommendation that "government securities provided the highest safety available" of "other zero coupon bonds with lesser ratings of A or better current yielding 13% out to 1997";
2. On May 21, 1985, Prudential purchased 15,000 Rapid American Corp RGMS 0% 03/05/92 bonds at 42-3/4 plus two other A+ or better rated bonds. Elliot understood that the Rapid American investment would pay back \$15,000 on March 1, 1992 with a minimal risk of default;
3. While living in Abidjar, Ivory Coast, West Africa, Prudential advised Elliot that "Rapid American is not rated". Elliot assumed that the bonds had not yet been rated, but that when they were rated, they would be A or better, in conformance with Prudential's recommendation;
4. In early 1988, Elliot became concerned about the low value of the Rapid American bonds and called the branch manager of the Houston Prudential office and expressed his displeasure with the poor performance of the bonds;
5. By early 1989, Elliot could obtain no further information and wrote Hawkins. A reply was received 9 months later disclaiming any liability, but by this time, Elliot was aware that the Rapid American bonds were "junk" bonds and had reason to believe that Prudential was aware of this in 1985; and
6. The bond issues defaulted on March 1, 1991, but the trust fund received no official notification proposal from them.

Respondent Prudential denied the material allegations of the Statement of Claim, alleging that Claimant was fully aware of the risks involved in the bonds. In addition, Prudential asserted

an affirmative defense that the claim was time-barred by the statute of limitations.

RELIEF REQUESTED

Claimant requested that the panel enter an award against Prudential for \$15,000.00.

Respondent requested that the Claimant's claim be denied in its entirety and that Prudential should be awarded attorneys' fees and costs for defending against this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Prudential did not file an executed submission agreement, but filed a Statement of Answer, appeared and testified at hearing, and as a member firm of the NASD the Arbitrator finds that Prudential is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

Respondent Prudential filed a Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure as part of the Statement of Answer. On September 11, 1992, after review of the parties documentation, the Director of Arbitration determined that the case would continue to be processed with the exception of allegations relating to the misrepresentations more than six years prior to Claimant's April 28, 1992 submission. The fraudulent omissions by Respondent which were alleged to have occurred in 1987 were eligible.

Respondent's Second Motion to Dismiss, and all responsive documents, were submitted to the Arbitrator for decision. On March 12, 1993, the Arbitrator determined that the Motion would be denied.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

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. Respondent Prudential Securities Incorporated is liable for and shall pay to Claimant Richard M. Elliot, as Trustee of the Elliot Family Trust, the sum of \$14,562.00;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed. One (1) session x \$300.00 per session = \$300.00.

The National Association of Securities Dealers Inc. shall retain the claim filing fee of \$100.00 and refund the hearing session deposit of \$300.00 previously deposited by the Claimant, Richard M. Elliot, as Trustee of the Elliot Family Trust. Respondent Prudential Securities Incorporated is liable for and shall pay to the NASD forum fees in the sum of \$300.00.

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

Arbitrator's Signature

Name

Date

Michael E. McGown, Esq.
Michael E. McGown, Esq.

May 26, 1993

Date of Service on Parties:

5-28-93