

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Cunningham Impl't Co. Profit SH TR

92-02109

Name of Respondent

Prudential Securities, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 24, 1992, Claimant Cunningham Implement Company, by and through Robert Cunningham, alleged that Respondent Prudential Securities, Inc., by and through Robert Hirsch, Financial Advisor, solicited their business by phone: whereby Claimant agreed to do business only if U.S.A. government obligations and zero coupon bonds were purchased and that no agency paper be purchased. Claimant further alleged that Respondent, by and through Mr. Hirsch, agreed to these terms, at which time, Claimant agreed to purchase \$62,000 of "FHLMC REMIC Z Bonds" due August 1, 1990 and another \$44,856 purchase of these same bonds due September 15, 1990, whereby Mr. Hirsch sent Claimant 50 pages of copy paper, none of which Claimant or it's bankers understood. Claimant contended that they signed an account agreement and informed Respondent, by and through, Mr. Hirsch, that Claimant would only purchase bonds based solely on Mr. Hirsch's advice that they would satisfy Claimant's criteria. Claimant further contended that it found out that the bonds purchased were not direct U.S.A. government obligations but the highest risk agencies available on the market, thus, Claimant refused to pay for the second half of the purchase, at which time, Respondent sold the bonds for a loss of \$4,283.92 and billed Claimant for that amount. Claimant asserted that they paid the amount in order to insure that Respondent exercised an authorized trade, then Respondent sold out the trade for a loss, at which time, Respondent made Claimant pay for their unauthorized actions. Claimant further asserted that Respondent, by and through, Mr. Hirsch, assured them he was investing as requested; however, they acted directly against their instructions, thus, causing them to incur losses.

Respondent Prudential Securities, Inc., by and through their in-house counsel, Eric J. Sussman, Esq., maintained that in July 1990 Claimant Cunningham Implement Company Profit Sharing Trust purchased 70,000 Federal Home Loan Mortgage Corporation ("FHLMC") real estate mortgage investment conduit ("REMIC") bonds and subsequently, in August 1990, purchased 50,000 more FHLMC REMIC bonds, at which time, Claimant paid for the first purchase, however; after the second purchase was made and payment was due, Claimant wanted to delay the payment whereby they eventually refused to pay for the second purchase. Respondent further maintained that on September 21, 1990 they were forced to sell the 50,000 FHLMC REMIC bonds out of Claimant's account at a loss of approximately \$4,284.00. Respondent contended that Claimant covered the debit balance and continued to hold the first 70,000 FHLMC REMIC bonds whereby they continued to earn the interest accruing to those bonds, at which time, in June, 1991 Claimant had them transferred to another broker/dealer, thus ratifying the fact that Claimant knew what security it had purchased. Respondent further contended that their Financial Advisor, Mr. Hirsch was careful to explain to Claimant that the bonds were not direct obligations of the Federal Government but bonds that carried a AAA rating and not a zero coupon bond. Respondent asserted that Claimant entered into these transactions with full disclosure and full opportunity to review the security before it authorized the two purchases.

Respondent further asserted a Motion to Dismiss and maintained that Claimant purchased it's interests in the FHLMC REMIC bonds with full knowledge and full disclosure, therefore, the claim should be dismissed.

### **RELIEF REQUESTED**

Claimant Cunningham Implement Company Profit Sharing Trust requested \$4,055.18 in actual damages plus interest in the amount of \$730.00 and reimbursement of the NASD filing fee.

Respondent Prudential Securities, Inc. requested the claim be dismissed in it's entirety and costs be assessed against Claimant.

### **AWARD**

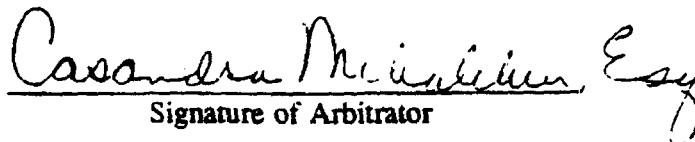
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Casandra Mihalchik, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on June 17, 1992 and by the Respondent on December 10, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential Securities, Inc. Motion to Dismiss is denied.
2. Respondent Prudential Securities, Inc. is liable and shall pay to the Claimant Cunningham Implement Company Profit Sharing Trust the sum of \$4,055.18 in damages.
3. Respondent Prudential Securities, Inc. is liable and shall pay to the Claimant Cunningham Implement Company Profit Sharing Trust simple interest at the rate of 7% per annum from September 21, 1990 to the date of payment of the award.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Cunningham Implement Company Profit Sharing Trust shall be retained by the NASD, Inc. Respondent Prudential Securities, Inc. is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

**AFFIRMATION**

I, CASANDRA MIHALCHIK, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: March 22, 1993