

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Burnham J. Nash

and

92-02404

Name of Respondents

Prudential Securities, Inc. and
Greg Fulton

REPRESENTATION OF PARTIES

Burnham J. Nash ("Claimant") was represented by Steven W. McDonald, Esq. of Brenman, Raskin, Friedlob & Tenenbaum, P.C., Denver, Colorado.

Prudential Securities, Inc. and Greg Fulton ("Respondents") were represented by Wesley B. Howard, Esq. of Brega & Winters, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about July 21, 1992. Submission Agreement of Claimant Burnham J. Nash was signed on July 9, 1992.

Statement of Answer was filed by Respondents Prudential Securities, Inc. and Greg Fulton on or about September 9, 1992. Submission Agreement of Respondent Prudential Securities, Inc. was signed on August 20, 1992 by Elliot H. Henslovitz. Submission Agreement of Respondent Greg Fulton was signed on August 24, 1992.

HEARING INFORMATION

A pre-hearing conference was held on Thursday, April 15, 1993 for one (1) session. The hearing was held on Thursday, May 6, 1993 for three (3) sessions, Friday, May 7, 1992 for two (2) sessions, Monday, June 14, 1993 for two (2) sessions and Tuesday, June 15, 1993 for two (2) sessions in Denver, Colorado for a total of one (1) pre hearing session and nine (9) hearing sessions.

CASE SUMMARY

Burnham J. Nash ("Claimant") alleged that Prudential Securities, Inc. and Greg Fulton ("Respondents") made unsuitable investments, omitted to state material facts, engaged in common law fraud, breached their fiduciary duty to the Claimant, and violated the Colorado Securities statutes. Claimant also alleged that Respondent Prudential failed to supervise Respondent Greg Fulton. Claimant specifically alleged that the investments in certain bonds were unsuitable for him in light of his stated investment objectives and financial situation. The bonds at issue in this matter are Beaver Creek Metropolitan District, Eagle County, Colorado General Obligation Refunding & Improvement Mandatory Sinking Fund Bonds; El Paso County, Colorado Special Assessment District Local Improvement District No. 1985-2 Bonds; Littleton Colorado Riverfront Authority Revenue Refunding Tax Increment Bonds; Littleton Colorado Riverfront Authority Revenue Tax Increment Mandatory Sinking Fund Bonds; Dove Valley Metropolitan District, Arapahoe County, Colorado General Obligation Refunding and Improvement Bonds, Series 1988, Mandatory Sinking Fund, dated April 1, 1988; Dawson Ridge Metropolitan District No. 1 Series 1986B Bonds; Castle Pines North Metropolitan District, Series B, Douglas County, Colorado Bonds; The Colorado Springs-Stetson Hills Public Building Authority, Landowner Lien Bonds, Series 1988A Bonds; The Colorado Springs-Stetson Hills Public Building Authority, Landowner Lien Escrow; Edgewater Colorado Redevelopment Authority Tax Increment Revenue Refunding Series 1988, Urban Renewal Bonds; and Roxborough Village metropolitan District General Obligation Refunding and Improvement Bonds, Series 1986. It was further alleged that Greg Fulton failed to disclose certain facts regarding the bonds such as their rating and the risks inherent in the investment in the bonds.

Prudential Securities, Inc. and Greg Fulton ("Respondents") denied the allegations set forth in the Statement of Claim and stated that the Claimant was experienced in certain aspects of business and in money matters generally. Respondents stated that Greg Fulton discussed each securities transaction with the Claimant prior to executing the trade. Respondents also specifically denied that misrepresentations were made, and denied that any omissions to state material fact were made. It was further stated that the claims asserted are barred by the applicable statutes of limitations and the doctrine of laches in addition to the additional affirmative defenses of failure to mitigate and waiver.

RELIEF REQUESTED

Claimant Burnham J. Nash requested an award in his favor and against Respondents Prudential Securities, Inc. and Greg Fulton, jointly and severally as follows: for actual damages in an amount to be determined at the hearing but believed to be approximately \$150,000.00, exemplary damages in an amount to be determined, attorney's fees and costs as provided under Section 11-51-604(3), interest as provided by law, and for such other and further relief as the Panel deems just and proper.

Respondents requested that the arbitration panel enter an award in their favor and against the Claimant determining that Claimant take nothing by his Statement of Claim and award Respondents their attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Subsequent to the first set of hearing dates and prior to the commencement of the second set of hearing dates in this matter, Respondents filed a Motion to Disqualify the Chairman of this panel. After review of the motion and the response thereto the full panel **denied** the motion.

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 original(s) remain on file with the N.A.S.D..

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety. The undersigned arbitrators find that while Greg Fulton was not as careful as he should have been, his lack of diligence did not result in damage to the Claimant. The undersigned arbitrators further find that while the supervision of Greg Fulton by Prudential was negligent, such negligence did not result in any damage to the Claimant.
2. The claim for attorney's fees asserted by Respondents shall be and hereby is denied.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall refund as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the N.A.S.D. the sum of **\$7050.00** as forum fees.

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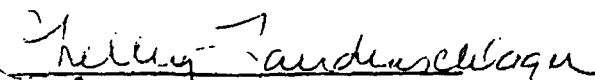
Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. *Fees are payable to the National Association of Securities Dealers, Inc.*

Dated:



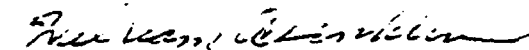
Daniel C. Himelspach, Esq.
Public Arbitrator, Presiding Chair

June 29, 1993



Shelly Laudenschlager, Esq.
Public Arbitrator

6-29-93



William A. Conklin
Industry Arbitrator

6-29-93