

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William R. and Suzanne La Velle

92-02451

Name of Respondent(s)

Prudential Securities Inc
Gary Zahn
John Palmer

REPRESENTATION

For Claimants: Susan N. Perkins, Esq.
For Respondents Prudential Securities, Inc. and John Palmer: Howard Wilson,
Esq. of Rosenman & Colin.
The Respondent Gary Zahn did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: July 23, 1992.
Amended Statement of Claim filed: May 18, 1993.
Claimants' Submission Agreement signed on: July 16, 1992.

Joint Statement of Answer filed by Respondents, Prudential Securities, Inc and
John Palmer on: October 15, 1992.
Respondent, Prudential Securities Inc.'s Submission Agreement signed on:
October 13, 1992.
Respondent John Palmer's Submission Agreement signed on: November 2, 1992.

Respondent Gary Zahn has not filed an answer or executed a Submission
Agreement as required pursuant to Section 25 of the Code of Arbitration
Procedure.

HEARING INFORMATION

Pre-hearing Dates/Sessions: May 12, 1993/One session

Hearing Dates/Sessions: May 18, 1993/Two sessions
May 19, 1993/Two sessions
June 30, 1993/Two sessions
July 1, 1993/Two sessions
July 21, 1993/One session

Hearing Location: NASD offices located in New York City.

CASE SUMMARY

Claimants allege that Respondent Gary Zahn("Zahn") made investments in the Blackstone Target Term Trust, limited partnerships, junk bond funds, options, collateralized mortgage obligations and made purchases on margin for their joint account and Claimant William La Velles's IRA Rollover account which Claimants allege were unsuitable in light of their investment objectives and sophistication. Claimants further allege that Respondent Zahn commingled the assets of Claimants with the assets of others and made other unauthorized transactions including the opening of a Command Account. Claimants also allege that they were induced by Respondent John Palmer("Palmer") to purchase units of the Prudential-Bache Energy Income Limited Partnership which they allege was also unsuitable. Claimants also allege that they were misled by the monthly statements which carried the limited partnership investments at cost and by the intentional misrepresentations made by Respondents Zahn and Palmer as to the safety and value of the investments. Claimants further allege that Respondents Zahn and Palmer failed to disclose the risks of their activities, intentionally ignored Claimants' instructions and intentionally misled them by initially agreeing to their instructions. Claimants allege that this conduct constitutes common law fraud, breach of fiduciary duty and violations of Article III, Section 18 of the NASD Rules of Fair Practice and Sections 10(b) and 20 of the Securities and Exchange Act. Claimants also allege that Respondent Prudential Securities, Inc.("Prudential") intentionally or negligently permitted the violations of Respondents Zahn and Palmer by failing to exercise compliance oversight and supervision of its registered representatives as required by Article III, Section 27 of the NASD Rules of Fair Practice.

Respondents Prudential and Palmer maintain that all of the investments made in Claimants' accounts were suitable in light of their stated investment objectives of long term growth and income. Respondents Prudential and Palmer further maintain that the claim of unauthorized trading is unfounded because the Claimants received confirmation slips and monthly statements which set forth all of the purchases in their accounts. Respondents Prudential and Palmer also maintain that the monthly statements made clear that the limited partnerships were carried at cost and were therefore not misleading. Respondents Prudential and Palmer also maintain that Claimants' authorized, accepted and ratified each transaction, knowingly and intentionally assumed those risks and all risks were properly disclosed and Claimants have brought this claim to recover losses that resulted from market developments. Respondents Prudential and Palmer further maintain that Claimants' claims are barred by the applicable statutes of limitations, estoppel and waiver.

RELIEF REQUESTED

Claimants amended the Statement of Claim to request the rescission of their investments with Respondents in the amount of 291,738.14, plus interest in the amounts of 142,803.06 and 14,310.75, the return of all commissions and margin interest, punitive damages in the amount of \$100,000 and costs, including attorneys' fees, expert witness fees and such other and further relief as to the Panel seems fair and equitable.

Respondents request that the claim be dismissed in its entirety and an award of costs, expenses of the arbitration and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED & DECIDED

- 1) In accordance with Section 25 of the Code of Arbitration Procedure, Respondent Zahn was served with the Statement of Claim and given an opportunity to respond which he failed to do;
- 2) In accordance with Sections 21 and 26 of the Code of Arbitration Procedure, Respondent Zahn was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;
- 3) In accordance with Section 29 of the Code, the arbitration panel decided in light of the foregoing information to proceed with Respondent Zahn as a party.

AWARD

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

- 1) Respondents Prudential and Zahn are jointly and severally liable and shall pay to the Claimants the sum of \$17,242 inclusive of interest.
- 2) All claims against Respondent Palmer are dismissed as there is an absolute finding of no liability or improper conduct on the part of Respondent Palmer.
- 3) This award shall in no way prejudice Claimants' right to tender their units of Prudential-Bache Energy Fund Limited Partnership Series III and Prudential-Bache Energy Fund Limited Partnership Series IV pursuant to any outstanding offer of settlement in any class action pending on the date of this decision.
- 4) The Respondents Prudential and Zahn are jointly and severally liable and shall pay to the Claimants the sum of \$950 to reimburse them their fees paid.
- 5) Each party shall bear their respective costs, including attorneys' fees and expert witness fees.
- 6) All other claims are hereby dismissed.

FORUM FEES

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

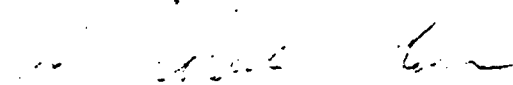
$\$300(\$300 \times 1 \text{ pre-hearing session}) + 6,750 (9 \text{ sessions} \times \$750.00) = \$7,050$
minus Claimants' hearing session deposit of \$750 = net \$6,300 due.

Forum fees in the amount of \$6,300 are hereby assessed Against Respondents Prudential Securities, Inc. and Gary Zahn, jointly and severally.

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

ARBITRATORS' SIGNATURE



W. Charles Robinson, Esq.
Public Arbitrator

David S. Billet, Esq.
Public Arbitrator

Edward Buckley
Industry Arbitrator

Date of Decision: August 17, 1993

STATE OF:

SS:

COUNTY OF:

On this 10 day of July, 1993, before me personally appeared W. Charles Robinson, Esq. known 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.

STATE OF: N.Y.

W. JAMES NOLAND
Notary Public, State of New York
No. 41-4782702
Qualified in Queens County
Commission Expires March 30, 1995

COUNTY OF: N.Y.

On this 5 day of August, 1993, before me personally appeared David S. Billet, Esq. known 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.

STATE OF:

Valerie S. Wolfman
VALERIE S. WOLFMAN
Notary Public, State of New York
No. 4956657
Qualified in New York County
Term Expires 4/12/95

COUNTY OF:

On this 13 day of August, 1993, before me personally appeared Edward Buckley known 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.

William C. Araneo

WILLIAM C. ARANEO
NOTARY PUBLIC, State of New York
No. 41-4782702
Qualified in Suffolk County
Commission Expires Nov 30, 1993