

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Names of Claimants**

Sarah and John Monier

92-02485

**Names of Respondents**

Prudential-Bache Securities Inc. n/k/a  
Prudential Securities, Inc. and  
Vincent Lazara

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**REPRESENTATION**

Claimants, John and Sarah Monier were represented by Barry Kirschner, Esq. of Raven, Kirschner & Norell, Tucson, Arizona.

Respondents, Prudential-Bache Securities, Inc. n/k/a Prudential Securities, Inc. and Vincent Lazara were represented by Jesse B. Simpson, Esq. and Gary Dukarich, Esq. of Lewis and Roca, Phoenix and Tucson, Arizona, respectively.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. (NASD) on July 27, 1992.

Claimants, John and Sarah Monier's Submission Agreement was signed on July 21, 1992.

The Joint Statement of Answer was filed with the NASD by Respondents, Prudential-Bache Securities, Inc. n/k/a Prudential Securities, Inc. and Vincent Lazara on September 26, 1992.

Respondent, Prudential-Bache Securities, Inc. n/k/a Prudential Securities, Inc.'s Submission Agreement was signed on September 28, 1992 by Kimberly Unger, Associate Vice President and Associate General Counsel.

Respondent, Vincent Lazara did not file an executed Submission

Agreement with the NASD.

An Amended and Supplemental Statement of Claim was filed with the NASD by the Moniers on November 16, 1992.

An Answer to the Amended and Supplemental Statement of Claim was filed with the NASD by Prudential-Bache Securities, Inc. n/k/a Prudential Securities, Inc. and Vincent Lazara on January 20, 1993.

### **HEARING INFORMATION**

The hearing took place on October 12, 1993 for two (2) hearing sessions, October 13, 1993 for one (1) hearing session October 14, 1993 for three (3) hearing sessions and October 15, 1993 for three (3) hearing sessions.

The hearing location was Scottsdale, Arizona.

### **CASE SUMMARY**

Claimants, John and Sarah Monier ("the Moniers") alleged that they invested in excess of \$100,000 with Respondents, Prudential-Bache Securities, Inc. n/k/a Prudential Securities, Inc. ("Prudential") and Vincent Lazara ("Lazara"). The Moniers alleged that the investments made by Lazara and Prudential were generally high commission, of higher risk than represented and in-house products to the exclusion of other investments available. The Moniers alleged that their funds were placed in PB-19, an oil and gas limited partnership, PB Global Fund, Inc. and PB Government Fund Plus mutual funds which were more risky and of shorter history than others of equal or greater promise.

The Moniers alleged that Prudential and Lazara placed them in unsuitable investments, breached the contract entered into by and between them and engaged in common law fraud by making materially false representations concerning the investments and further that the conduct of Prudential and Lazara breached various Arizona Revised Statutes. Among the statutory violations alleged were A.R.S. Section 44-1991, A.R.S. Section 13-2310, A.R.S. Section 13-2314(A), A.R.S. Section 13-2301(D)(4)(r) and (t) and A.R.S. Section 44-1995.

In their Amended Statement of Claim, the Moniers asserted that the P-19 partnership was not in compliance with a requirement under Arizona law that the prospectus be labelled with a representation that the securities were speculative.

Respondents, Prudential and ("Lazara") alleged that the Prudential-Bache Energy Income Fund Partnership was a long term income oriented investment in proven, producing oil and gas properties. The investment was asserted to be consistent with the Monier's investment objective of long term growth. The Moniers were furnished a prospectus prior to investment and had the capability to understand what they were investing in. Additionally, Prudential and Lazara asserted that the diversity of investments made in the Monier's portfolio was suitable for them given their investment objectives and goals. Prudential and Lazara also asserted that the claims were barred by applicable statutes of limitation and ratification. Additionally, Prudential and Lazara asserted that the New York conflict of laws provision in the customer contract precluded any award of punitive or treble damages.

Prudential and Lazara responded to the amended statement of claim and asserted that the allegation that there was no sticker affixed to the Monier's prospectus made no difference to any issue in the case. Additionally, Prudential and Lazara asserted that the general practice of the prospectus billing department was to affix stickers to prospectuses furnished to Arizona residents.

#### **RELIEF REQUESTED**

The Moniers requested compensatory damages of not less than \$60,000, rescission, treble damages in the amount of \$180,000.00 pursuant to the Arizona Rico Statute, exemplary damages of not less than \$250,000.00, costs, attorney's fees and all further relief deemed just under the premises.

Prudential and Lazara requested dismissal of the claim and an award of the reasonable costs and attorney's fees incurred in defending the claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Although Respondent, Lazara did not file an executed Submission Agreement with the NASD he is required to arbitrate this dispute pursuant to Section 12 of the NASD Code of Arbitration Procedure and is bound by the panel's decision on all issues submitted to them for consideration.

On October 8, 1993, the parties entered into a stipulation to dismiss Respondent, Lazara as a party to this proceeding. By virtue of this stipulation, Respondent, Lazara is dismissed without prejudice and Respondent, Prudential remains as the sole Respondent in this proceeding.

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.

### **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. Prudential is liable for and shall pay to the Moniers, the sum of Twenty Three Thousand Eight Hundred Twenty Seven Dollars and Twenty Cents (\$23,827.20). The panel found that there was a violation of Arizona Revised Statutes Section 44-1991 in connection with the sale by Respondent, Prudential Securities, Inc., of Prudential-Bache Energy Income Limited Partnership Series V, P-19 to the Moniers. The panel also concluded that the violation of Arizona Revised Statutes Section 44-1991, constituted a violation of Arizona Revised Statutes Section 13-2301 *et seq.*, and pursuant to Arizona Revised Statutes Section 13-2314(A), the Monier's damages of Seven Thousand Nine Hundred Forty Two Dollars and Forty Cents were trebled to \$23,827.20. Both parties addressed the issue of the applicability of the Arizona Rico Statute in their respective hearing memorandum of law and the panel concluded that it had the authority to award treble damages to the Moniers under Arizona law;
2. All other claims/counts set forth in the Statement of Claim, as amended, are dismissed; and,
3. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously paid to the NASD by the Moniers. Prudential shall directly reimburse the Moniers for these sums and is assessed additional Forum Fees in the amount of \$6000.00.

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Forum Fees were assessed on the basis of \$750.00 per hearing session for nine (9) hearing sessions. Additional Forum Fees assessed to the parties are payable to the NASD.

Concurring Arbitrators' Signatures  
Name

<u>s/s K. Leonard Judson</u>	<u>December 23, 1993</u>
K. Leonard Judson, Esq.	Dated
Presiding Chairperson	
Public Arbitrator	

<u>s/s Donald E. Cline</u>	<u>December 28, 1993</u>
Donald E. Cline	Dated
Panelist	
Public Arbitrator	

<u>s/s James M. Rapisarda</u>	<u>December 28, 1993</u>
James Rapisarda	Dated
Panelist	
Industry Arbitrator	

Date Award Served on the parties by the NASD: January 19, 1994