

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jeanette Williams

92-03095

Name of Respondents

Prudential Securities Inc
Gene Boyle, III

REPRESENTATION

For Claimant Jeanette Williams appeared Robert S. Moraff, Esq. of the law firm of Schwartz, Tobia & Stanziale.

For Respondent Prudential Securities, Inc. appeared Beth Kaufman, Esq. of the law firm of Shoeman, Marsh & Updike.

Respondent Gene Boyle, III appeared at the hearing pro se.

CASE INFORMATION

The Statement of Claim was filed on September 15, 1992 and Claimant's Submission Agreement was signed on July 23, 1994.

The Statement of Answer of Respondent Prudential Securities Inc. was filed on December 7, 1992. Respondent Prudential Securities Inc.'s Submission Agreement was signed on October 15, 1992.

Respondent Gene Boyle, III did not file a Statement of Answer and did not file a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: April 28, 1994 - 1 Session

Hearing Dates/Sessions: September 20, 1994 - 1 Session
 September 21, 1994 - 2 Sessions
 September 22, 1994 - 2 Sessions

The hearings were held at the National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant Jeanette Williams ("Claimant") alleged that on or about October 21, 1988, Respondent Gene Boyle III ("Boyle") recommended an investment known as JHM Mortgage Securities, L.P. which he represented was an investment which satisfied Claimant's specific investment objectives which were to invest a specific portion of her portfolio in safe and conservative investments with the primary objective being preservation of capital and generation of income. Claimant further alleged that in response to her stated investment objective, Boyle presented two investments to Claimant, one of which is the subject matter of this claim, namely, a \$100,000.00 investment in JHM; that Boyle represented that his employer, Prudential Securities, Inc., indicated that the anticipated return on said investment would be in excess of 13%; that the nature of the investment and the investment strategy of the partnership would not place Claimant's principal at material risk; and that Respondent Boyle further indicated that the said investment was consistent with Claimant's investment objectives and held out by Prudential to be suitable for those persons who did not wish to place the principal of their investment at risk. Moreover, Claimant alleged that she relied upon Boyle to ascertain all of the material facts and risks associated with this investment when, in fact, JHM was a speculative, highly volatile and risky investment not suitable for persons who wish to conserve and protect principal.

Respondent Prudential Securities, Inc. ("Prudential") denied all allegations of wrongdoing asserted in the Statement of Claim. Respondent Prudential denied that the investment at issue was intentionally, or even negligently, misrepresented to the Claimant. Furthermore, Prudential denied that it failed to abide by Claimant's stated investment objectives. Prudential asserted that the allegations raised by the Claimant are insufficient to state a cause of action and must be dismissed.

Further, Respondent Prudential maintained that on or about October 27, 1988, Claimant purchased 10,000 units of JHM. Claimant was allegedly sent a purchase confirmation and a prospectus detailing the potential risks and material facts about the investment now alleged to have been unsuitable and/or misrepresented. Prudential also maintained that Claimant held this limited partnership at Prudential from October 27, 1988, until the partnership was delivered out of the account on March 29, 1990, during which time Claimant received over ten thousand dollars in distributions on the investment.

Claimant could not, Prudential maintained, as a matter of law, rely upon the alleged unsuitable recommendations or alleged oral misrepresentation which Claimant contends were made by Respondent Boyle in the face of contrary language contained in the prospectus received by Claimant which disclosed all material facts and risks regarding the investments now alleged to have been unsuitable and/or orally misrepresented.

Moreover, Respondent Prudential moved to dismiss the Statement of Claim because the claims are time-barred pursuant to the statute of limitations as applied in Lampf et. al. vs. John Gilbertson et. al. wherein the Supreme Court held that litigation instituted pursuant to Section 10(b) and Rule 10b-5 must be commenced within one year of the discovery of the facts constituting the violation and within three years of such violation. Further, Prudential maintained that the Statement of Claim failed to state a claim upon which relief could be granted or to state any facts that support the claims set forth therein; that the Claimant was negligent and/or reckless, which proximately caused all losses sustained; that Claimant is precluded from recovery under the principles of laches, ratification, waiver and estoppel; and that at all times material herein, Respondent Prudential acted in good faith.

RELIEF REQUESTED

Claimant requested an award in the sum of \$34,957.76, plus loss of return on her investment had the monies been invested in a suitable security. Claimant also requested prejudgment interest and costs assessed against Respondents, jointly and severally.

Prudential requested that the Statement of Claim be dismissed in its entirety and that such other and further relief be awarded as the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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.

At the hearing, Respondent Gene Boyle, III appeared to testify on Claimant's behalf. The arbitration panel advised Respondent Boyle that he was a named party to this arbitration and reminded him of his right to representation by counsel at any stage of the proceedings pursuant to Section 27 of the Code of Arbitration Procedures.

The arbitration panel made the following rulings as to Respondent Boyle who failed to file an answer in this arbitration and failed to file a properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement):

- (1) Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Boyle.
- (2) The panel found that Boyle was a person associated with an NASD member namely, Prudential Securities, Inc.. at the time this controversy arose. Consequently, the panel found personal jurisdiction over Boyle pursuant to Section 12 (a) of the Code. Additionally, Boyle executed a Form U-4 requiring him to arbitrate at this forum upon demand of the Customer Claimant.
- (3) In view of (2) above, Boyle was required to execute and file with the NASD a submission agreement pursuant to Section 25 (b) of the Code. In this regard the panel found that the NASD properly served the Claimant's claims upon Boyle pursuant to Section 25 (a) of the Code.

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. Respondent Prudential Securities, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$10,000.00, interest specifically excluded.
2. Respondent Gene Boyle III be and hereby is liable and shall pay to the Claimant the sum of \$10,000.00, interest specifically excluded.
3. Each party shall bear their respective costs, including attorney's fees.
4. All other claims be and hereby are dismissed.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the following Forum Fees are assessed:

One Pre-hearing x \$300.00 = \$ 300.00

6 Sessions x \$400.00 = \$2,400.00 minus Claimant's \$400.00 hearing session deposit = \$2000.00

TOTAL OUTSTANDING FEES = \$2,300.00

Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$2,300.00.

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

Concurring Arbitrators' Signatures
Name

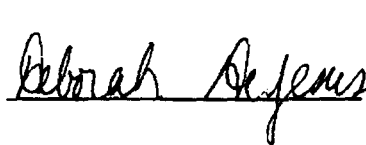
Allen Kilik, Esq.
Public Arbitrator - Chairperson


Anne Cugliani
Public Arbitrator

Louis Wald
Industry Arbitrator

STATE OF
COUNTY OF

On this 8 day of November, 1994 before me personally appeared Anne Cugliani known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.


DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

Date of Decision: November 11, 1994

TOTAL OUTSTANDING FEES = \$2,300.00

Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$2,300.00.

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

Concurring Arbitrators' Signatures

Name

Allen Kilik

Allen Kîlik, Esq.

Public Arbitrator - Chairperson

Anne Cugliani
Public Arbitrator

Louis Wald
Industry Arbitrator

STATE OF
COUNTY OF

On this 25th day of October, 1994 before me personally appeared Allen Kiliak known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

W. B. Bunt

NEW YORK, N. Y. (UPI) -
NEW YORK, N. Y. (UPI) -
NEW YORK, N. Y. (UPI) -

Date of Decision: November 11, 1994

TOTAL OUTSTANDING FEES = \$2,300.00

Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$2,300.00.

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

Concurring Arbitrators' Signatures
Name

Allen Kilik, Esq.
Public Arbitrator - Chairperson

Anne Cugliani
Public Arbitrator

Louis Wald
Louis Wald
Industry Arbitrator

STATE OF
COUNTY OF

On this 25th day of OCTOBER, 1994 before me personally appeared
LOUIS WALD known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Executed on:
Date of Decision: September 11, 1994
Date of Decision: November 11, 1994

THE STATE OF NEW JERSEY
COUNTY OF BERGEN
Sworn and subscribed before me
This 25 day of October
1994
[Signature]
NOTARY PUBLIC