

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Edward and Iva O'Connell

Case No. 92-03344

Name of Respondent(s)

Prudential-Bache Securities Inc.
Russell Ketchum
Patricia Youngquist

REPRESENTATION

For Claimant, Edward and Iva O'Connell ("the O'Connells"): Terrance A. Bostic, Esq. Ackerman, Senterfitt & Eidson, P.A. Tampa, Florida.

For Respondent, Prudential Securities, Inc. ("Prudential"), Russell Ketchum ("Ketchum") and Patricia Youngquist ("Yongngquist"): Frederick S. Schrills, Holland & Knight, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: October 5, 1992. Claimants' Submission Agreement signed: September 13, 1992.

Respondents, Joint Statement of Answer filed: November 11, 1994. Respondents Submission Agreement signed: December 7, 1992.

HEARING INFORMATION

On May 23, 1994, in Tampa, Florida, a pre-hearing conference lasting two (2) sessions were conducted with the arbitrators.

On November 21, 22, 23 and 30, 1994, in Tampa, Florida, hearings lasting 10 sessions were conducted.

NASD Award No. 92-03344

CASE SUMMARY

Claimants alleged that the Respondents sold to the Claimants securities in the Prudential-Bache Energy Growth Fund Number 3, Prudential Energy Growth Fund Number 4, Poloris Aircraft Income Fund IV, First Capital Institutional IV and in VMS; that in connection with such sales the Claimants were advised by Respondents that limited partnerships were safe investments, suitable for the investment of retirement funds, and would provide the required retirement income. More specifically, the Claimants alleged violations of: (1) suitability, (2) common law fraud, (3) Florida Securities and Investors Protection Act, (4) breach of contract, and (5) negligence.

Respondents denied all allegations of wrongdoing and alleged that at the time of the Claimants purchases, limited partnerships were perceived within the investment community as relatively conservative investments that were suitable for investors, like the Claimants.

Respondents alleged the affirmative defenses of statute of limitations, and as to alleged violations of common law fraud and negligence the Claimants are barred by the economic loss rule.

RELIEF REQUESTED

Claimants requested damages of \$135,000.00, punitive damages, interest, attorney's fees, costs, treble damages pursuant to the Florida Civil Remedies for Criminal Practices Act, and other such relief as deemed appropriate and just.

Respondents requested the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The Panel reaffirms its earlier ruling in denying the Respondents Motion to Dismiss.

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.

NASD Award No. 92-03344

AWARD

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

Respondents, Russell Ketchum and Patricia Youngquist, are found not liable and, therefore, all claims against them are hereby dismissed.

Respondent, Prudential Securities, Inc. is found liable and shall pay to the Claimants the amount of \$31,210.08.

Claimants' request for attorney's fees, costs, interest, punitive damages and treble damages are denied.

OTHER COSTS

Other than as provided below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,100.00 (two pre-hearing conferences x \$300.00 plus 10 hearing sessions x \$750.00).

Respondent, Prudential is hereby assessed \$8,100.00, \$750.00 of which shall be paid directly to the Claimants for the previously paid hearing session deposit, and \$7,350.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

Respondent, Prudential, shall reimburse the Claimants \$200.00 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
George S. Coit, Jr., Esq.

Public

/s/
Floyd A. Hillstrom, Esq.

Industry

/s/
Albert R. Neville, Jr.

Public

Date of Decision: Dated 12/28/94