

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Tarnia and Gerald Thierens

vs.

NASD #92-03430

Name of Respondents

**Prudential Securities
Gabriel Wisdom**

REPRESENTATION

For Claimant: Shirli Fabbri Weiss, Esq. of Gray, Cary, Ames & Frye of San Diego, California.

For Respondents: Patricia A. Fitzpatrick, Esq. of New York, New York

CASE INFORMATION

Statement of Claim filed: October 9, 1992

Claimant's Submission Agreement signed: October 5, 1992

Statement of Answer filed by Respondents on: January 14, 1993

Respondents' Submission Agreements signed on:

Prudential Securities, Inc.: January 13, 1993

Gabriel Wisdom: January 13, 1993

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: June 3, 1993 (one session)

Hearing Date/ Sessions:
July 7, 1993 (two sessions)
July 8, 1993 (two sessions)
August 12, 1993 (two sessions)
August 13, 1993 (two sessions)

Hearing Location: San Diego, California

CASE SUMMARY

Claimants alleged: Breach of Fiduciary Duty, Fraud and Deceit, Negligence and Breach of Contract in the purchase of limited and other partnership investments. During the relevant times, Claimant Tarnia Thierens (T. Thierens) worked as a floor and window covering consultant and Claimant Gerald Thierens (G. Thierens) worked as an auto mechanic. They immigrated from England in 1970 and opened an account with Respondents in 1987. Prior to that time Claimants had never had a securities account or had investment experience.

Claimants invested \$100,000 with Respondents, which represented all the equity in their home. That sum had been received in a settlement from a suit brought to recover losses from land subsidence. T. Thierens knew Respondent Gabriel Wisdom's (Wisdom) father who recommended his son to them. They met with Wisdom and advised him that the \$100,000 represented their entire net worth which they had received in the settlement. Claimants were interested in Fidelity Magellan Funds but Wisdom did not disclose that Respondent Prudential Securities, Inc. (Prudential) did not sell those funds and that to achieve the income they requested would require speculative investing.

G. Thierens demanded the return of Claimants' investment in 1989 when he believed the return was not close to what Wisdom had represented. Prudential denied his request eight months later. Claimants did not discover that they had lost principal until August 1992.

Respondents denied each and every allegation of the Statement of Claim and alleged: G. Thierens had his own business which dealt almost exclusively with expensive foreign cars. T. Thierens was described on the New Account Form as being a self-employed interior designer. Claimants' combined annual incomes were \$70,000, and net worth, exclusive of residence was \$250,000. They had five years of investment experience in mutual funds by 1987. Their investment objectives included safety, tax-sheltered income, long-term growth, speculation, income and hedging.

Claimants were not solicited for their business and received prospectuses on their investments. They received cash distributions as of the date of the Answer of \$47,596.59. Claimants also signed an investor subscription agreement with Prudential in 1987 which set out the investment requirements

RELIEF REQUESTED

Claimant requested:

1. Rescission of the investments, or, in the alternative, damages in the amount of their original \$80,000 plus the return they would have received if their funds had been suitably invested;

2. Special damages for emotional distress;

3. Punitive damages of \$800,000 against Prudential and \$100,000 against Wisdom.

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.

Respondents' Motion to Dismiss based on the Statute of Limitation, made at the hearing, was denied.

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. Claimants' request for rescission is granted. They are to return their shares of P.B. Energy Growth 3 and A.G. Spanos Genesis to Respondents;

2. Respondents are jointly and severally liable for and shall pay Claimants the sum of \$58,000;

3. All other claims, including the claims for punitive damages are dismissed.

4. The parties shall each bear their respective attorney's fees;

5. The parties shall each bear their respective costs.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall refund the \$1,000 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Respondents, jointly and severally, for \$8,300

calculated as follows: One prehearing sessions at \$300/prehearing session, plus eight hearing sessions at \$1,000/hearing session, equals \$ 8,300.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

Name

Public/Industry

William R. Newsome

Public Arbitrator

Stuart M. Hirschberg

Public Arbitrator

Lewis C. Brown

Industry Arbitrator

Concurring Arbitrators' Signature

DATE SERVED: 08/30/93

William R. Newsome

Stuart M. Hirschberg


Lewis C. Brown

Date of Decision: _____

92-3430

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Public Arbitrator

Lewis C. Brown

Industry Arbitrator

Concurring Arbitrators' Signature


William R. Newsome

DATE SERVED: 08/30/93

Stuart M. Hirschberg

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Date of Decision: Aug 13, 1993

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