

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

**Vivian P. Ezell, John J. Ezell
and Teri Ezell**

and

92-03258

Name of Respondents

**Prudential Securities, Inc.
and Marty Harari**

REPRESENTATION OF PARTIES

Vivian P. Ezell, John J. Ezell and Teri Ezell ("Claimants") were represented by Michael G. O'Neill, Esq. of O'Neill, Snell, Banowsky & McClure, Dallas, Texas.

Prudential Securities, Inc. and Marty Harari ("Respondents") were represented by Corbet F. Bryant, Esq. and Stephen J. Pierce, Jr., Esq. of Carrington Coleman Sloman & Blumenthal, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about September 28, 1992. Submission Agreement of Claimant Vivian P. Ezell was signed on September 24, 1992. Submission Agreement of Claimant John J. Ezell was signed on September 24, 1992. Submission Agreement of Claimant Teri Ezell was signed on September 24, 1992.

Statement of Answer was filed by Respondents on or about October 21, 1992. Submission Agreement of Respondent Prudential Securities, Inc. was signed on November 17, 1992 by John H. Bluhar, Esq. Submission Agreement of Respondent Marty Harari was signed on November 17, 1992.

HEARING INFORMATION

A pre-hearing conference was held on February 1, 1993 with Harold E. Vanberg, Jr., Esq., presiding.

The hearing was held on May 25, 1993 for two (2) sessions, May 26, 1993 for two (2) sessions, May 27, 1993 for two (2) sessions, June 24, 1993 for two (2) sessions, June 25, 1993 for two (2) sessions, June 26, 1993 for two (2) sessions, July 28, 1993 for two (2) sessions, August 1, 1993 for two (2) sessions, August 2, 1993 for two (2) sessions, and August 3, 1993 for two (2) sessions in Dallas, Texas for a total of twenty (20) regular and one (1) pre hearing sessions.

CASE SUMMARY

Claimants alleged violated their fiduciary duty to the Claimants; violated various federal and state securities statutes; misrepresented material facts; and violated the Texas Deceptive Trade Practices Act. Specifically, Claimants alleged that upon receipt of their accounts, Respondent Harari began an excessive number of transactions and also began investing an increasing portion of the accounts in high risk limited partnerships in which Prudential or one of its affiliates was a general partner. It was further alleged that Prudential offered high incentives to brokers to encourage their customers to purchase the high risk limited partnerships. Claimants also alleged that Respondents commenced a course of fraud upon them as to the value of the partnerships and their accounts in general by the practice of carrying all unmarketable limited partnerships at their original cost, which led investors to believe that all the partnerships held the same value as when originally purchased. Claimants finally alleged that Prudential failed to properly supervise Harari and that Respondents violated ERISA.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Harari in good faith made recommendations to Claimants for their investment in conformance with the stated investment goals. Respondents further stated that any realized losses in the accounts are the result of factors that were not known to Respondents at the time of the investments and the risks attendant to the investments were fully known to the Claimants or the designated representative and were acceptable for the accounts in question.

RELIEF REQUESTED

Claimants requested an award for actual losses, opportunities costs (or interest), attorney's fees, costs of this proceeding and other damages totaling over \$1,500,000.00, jointly and severally against Harari and Prudential. Claimants further requested that the award be trebled under the Texas Deceptive Trade Practices Act, due to the purposeful and continuing nature of the fraud and breaches of fiduciary duty by Respondents.

Respondents requested that this matter be dismissed, that Claimants recover nothing against them, and that they recover their costs.

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 original(s) remain on file with the N.A.S.D.

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. shall be and hereby is liable for and shall pay to the Claimant Vivian Ezell the sum of **Six hundred thirty seven thousand fourteen dollars (\$637,014.00)** which sum includes an award of interest and attorney's fees. In awarding attorney's fees in this matter, the undersigned arbitrators have considered the arguments of and authorities cited on behalf of the parties.
2. Claimants Vivian Ezell and the Vivian Ezell Pension Plan upon receipt of the sums stated above shall transfer to Prudential Securities, Inc. any and all interest in the following limited partnerships:

Energy Income Series IV P 16
Energy Income Series IV P 17
Energy Income Series IV P 23
Fogelman Secured Equity LP
Jones Intercable Investors LP Class A
Polaris Aircraft Income Fund I
Polaris Aircraft Income Fund II
Prudential Realty Acquisition Fund I
Prudential Realty Acquisition Fund II
Public Storage 7
Energy Income Series IV P 13
Polaris Aircraft Fund II
Summit Tax Exempt Bond Fund
Summit Tax Exempt Bond Fund II


3. The claims asserted by John Ezell and Teri Ezell against Prudential and Harari shall be and hereby are dismissed with prejudice.

4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250.00 and shall refund the hearing session deposit in the amount of \$1,000.00 previously deposited with the N.A.S.D. by the Claimant. Respondent Prudential Securities, Inc. shall pay to the N.A.S.D. the sum of \$20,300.00 as forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.


P. Michael Armstrong, Esq.
Public Arbitrator, Presiding Chair

Dated:

9-15-93


Harold L. Sutherland
Public Arbitrator

9-14-93


Michael G. Wadsworth
Industry Arbitrator

9-15-93