

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Glenda McConkey and Ronald McConkey

92-03871

Name of Respondents

Prudential Securities Incorporated;  
Bruce G. Vollrath

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**REPRESENTATION**

For Claimants: Glenda McConkey and Ronald McConkey ("McConkey") were represented by Anthony J. Hom, Esq., of the Law Offices of Anthony J. Hom, Esq., located in Philadelphia, Pennsylvania.

For Respondents: Prudential Securities Incorporated ("Prudential") and Bruce G. Vollrath ("Vollrath") were represented by Rawn H. Reinhard, Esq. and Eileen A. Maastricht, Esq. of Coffield Ungaretti & Harris, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: November 16, 1992.

Claimants' Submission Agreement signed on: October 28, 1992.

Statement of Answer filed by Respondents on: March 3, 1993.

Respondent Prudential's Submission Agreement signed on: April 6, 1993 by Peter Byer, Vice President, Prudential Securities Incorporated.

Respondent Vollrath's Submission Agreement signed on: March 12, 1993.

Respondents' Amended Statement of Answer filed: October 20, 1993.

Claimants' Response to the Amended Statement of Answer filed: October 29, 1993.

Respondents' Second Amended Motion to Dismiss filed: March 10, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: October 9, 1995 for One (1) session; and  
March 26, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimants alleged that Respondent Vollrath, while employed by or acting as an agent for Respondent Prudential, misrepresented the risks of certain limited partnerships and induced the McConkeys to purchase securities which were unsuitable given the Claimants objectives of preservation of capital and liquidity. In addition, Claimants alleged that the investments were improperly under valued on the monthly statements. Based on the allegations in the Statement of Claim, the Claimants asserted claims for common law fraud; breach of fiduciary duty; unsuitability; violations of the NASD Rules of Fair Practice; negligence; breach of contract; violation of the federal securities laws; and failure to supervise.

Respondents denied the material allegations of the statement of claim, asserting that:

1. The claims were ineligible for arbitration pursuant to Section 15 of the NASD Code of Arbitration Procedure;
2. The Claimants were provided with written prospectuses which clearly stated the risk factors of the investments;
3. There is no fiduciary duty between a client and a broker when the dispute involves transactions in a "non-discretionary" account;
4. Claimants are estopped from their claims because they were sent written summaries of all trades and made no affirmative complaint; and
5. The failure of claimants to complain after receipt of the written monthly statements and confirmations amounts to ratification of the disputed transactions.

### **RELIEF REQUESTED**

Claimants requested the entry of an award against Respondents for \$35,000.00 in compensatory damages plus interest from the date the losses were incurred to the date of hearing plus attorneys'

fees, costs and any other damages the Panel deemed fair. In the alternative, the Claimants requested rescission of the transaction in exchange for return of the \$35,000.00 original investment.

Respondents requested that the claim be dismissed in its entirety.

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

The Respondents' Statement of Answer contained a request for dismissal pursuant to Section 15 of the NASD Code of Arbitration Procedure. In addition, Respondent asserted a request for dismissal of claims relating to certain investments in the Amended Statement of Answer pursuant to Section 12 of the NASD Code of Arbitration Procedure. After review of the requests and all responses received, the Director of Arbitration on October 19, 1993 denied the Motion to Dismiss pursuant to Section 15 and excluded certain claims under Section 12 unless Claimants could produce documentation showing they had opted out of the class action which was the subject of the request for dismissal. The Section 12 motion was asserted to the panel who heard argument on October 9, 1995. The Claimant was given an opportunity to provide proof of opting out from the class action. No further documentation was received from the parties and the parties stipulated that the issue had been resolved at hearing.

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. Respondents Prudential Securities Incorporated and Bruce G. Vollrath are jointly and severally liable for and shall pay to the Claimants, Glenda McConkey and Ronald McConkey the sum of \$19,276.00 as actual damages;
2. The request for rescission is denied;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

**OTHER COSTS**

The NASD shall retain the \$400.00 postponement fee paid by Respondent Prudential Securities Incorporated. The overpayment of the postponement fee in the sum of \$600.00 shall be applied to the forum fees due.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$400.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 non-refundable claim filing fee and refund the \$400.00 hearing session deposit previously deposited by the Claimants. In addition, the NASD shall apply the \$600.00 overpayment of the postponement fee made by Respondent Prudential Securities Incorporated to the payment of the forum fees. Respondent Prudential Securities Incorporated is liable for and shall pay to the NASD the sum of \$600.00 for the additional forum fees due.

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

**Concurring Arbitrators' Signatures**

Name

Date

/s/ Stephen James Nagy, Esq.

April 23, 1996

Stephen James Nagy, Esq.

Public Arbitrator

Chairperson

/s/ Colleen Grace, Esq.

April 23, 1996

Colleen Grace, Esq.

Public Arbitrator

/s/ Richard P. Allen

April 23, 1996

Richard P. Allen

Industry Arbitrator

For NASD Use Only

Date of Decision: May 13, 1996