

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

WILLIAM M. McMILLAN

NASD Arbitration No. 92-3987

Name of Respondent(s)

PRUDENTIAL SECURITIES, INC.

REPRESENTATION

For Claimant: Joseph Devereux, Esq., Devereux, Murphy, Striler & Brickey, L.L.C., St. Louis, Missouri

For Respondent: Gabriel Loubier, Esq., Associate Vice President, Assistant General Counsel, Prudential Securities, Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: December 24, 1992

Claimant's Submission Agreement signed: December 24, 1992

Statement of Answer and Amended Answer filed on: February 18, 1993 and May 10, 1993

Respondent's Submission Agreement signed on: Respondent did not file a Submission Agreement but did file an Answer, appeared at the hearing and is

subject to the jurisdiction of the National Association of Securities Dealers, Inc. in accordance with Code of Arbitration Procedure Section 12.

HEARING INFORMATION

Pre-Hearing Conference: November 16, 1994

Hearing Date(s)/Sessions: November 21, 1994, 2 sessions

Hearing Location: San Francisco, CA

CASE SUMMARY

Claimant alleged:

Common law fraud, breach of fiduciary duty, negligence and negligent misrepresentation in the liquidation of unspecified securities which incurred a capital gains tax liability of approximately \$35,000. Respondent failed adequately to disclose that claimant would incur a tax liability as a consequence of the manner in which respondent planned to manage claimant's securities account. Claimant, in October 1991, had transferred his securities portfolio, containing approximately \$230,000 of blue chip stock, to respondent. In November 1991, respondent liquidated claimant's portfolio and replaced it with a new portfolio of securities.

Respondent generally and specifically denied all substantive allegations in the Statement of Claim and alleged:

Claimant opened a Managed Assets Consulting Services (hereinafter "MACS") account in October 1991, representing his annual income as in excess of \$50,000 and net worth exclusive of residence of \$250,000. His investment objectives were growth of capital and preservation of purchasing power. Claimant was provided with a full explanation of the investment program, including risks and its illiquid nature. After full disclosure and review of the program, claimant decided to invest.

Claimant received monthly statements and confirmations of each trade. At no time did claimant relinquish control of his account to respondent. No fiduciary relationship existed between claimant and respondent.

Claimant was specifically advised by respondent that the securities he was transferring to a managed account would or could be liquidated after the transfer.

The documents claimant signed in connection with opening the MACS account specifically deny that respondent will act as a tax advisor.

RELIEF REQUESTED

Claimant requested compensatory damages of not less than \$35,000; prejudgment interest at the highest allowable rate; punitive damages; costs; attorney's fees; and such further relief as deemed 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 original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The claimant's claim is denied, and no relief is granted. The parties shall each bear their respective attorney's fees and costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

The NASD shall retain the \$400.00 hearing session deposit previously deposited by the claimant. Forum fees are to be split between the parties and are calculated as follows:

One prehearing session at \$300/prehearing session (\$300), plus two hearing sessions at \$400/hearing session (\$800), totalling \$1,100.

Claimant's share of forum fees is \$150 (50% of the cost of the prehearing session (\$150) plus 50% of the cost of the hearing sessions (\$400) minus \$400 already paid by claimant as a hearing deposit).

Respondents' share of forum fees is \$550 (50% of the cost of the prehearing session (\$150) plus 50% of the cost of the hearing sessions (\$400).

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
John Smissaert	Public
Maurice Arth	Public
Robert Recker	Industry

Concurring Arbitrators' Signatures



Maurice Arth

Robert Recker

Date of Decision: _____

I dissent.

Dissenting Arbitrator's Signature

John Smissaert