

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Allen Herzlich

92-04007

Name of Respondent

Prudential Securities Inc

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 27, 1992, Claimant Allen Herzlich, who appeared Pro Se, alleged that in April, 1987 Respondent Prudential Securities, Inc., by and through Warren Weschler, persuaded him to purchase \$10,000.00 Prudential Energy Income Fund 17 by assuring Claimant that there were no risks involved since Respondent was underwriting the issue, at which time, Claimant was guaranteed a very high rate of interest, at 15% or better. Claimant further alleged that Respondent, by and through Mr. Weschler, failed to provide a prospectus and never stated what the commission would be. Claimant contended that Respondent told him to send a check for \$10,000.00 within a few days, at which time, Claimant thought he was making a safe and prudent investment, based on Mr. Weschler's sale pitch. Claimant further contended that Respondent's representations were false and they were material to the transaction in question, whereby the Claimant relied on them in making the decision to invest. Claimant asserted that Respondent owed to Claimant a duty to use reasonable care in the conduct of their business, especially insuring that their brokers would do the same thus Respondent breached that duty, causing a financial loss to the Claimant.

Respondent Prudential Securities, Inc., by and through their in-house counsel, Gerald J. Kowalski, maintained that Mr. Wechsler, financial advisor, recommended and Claimant Allen Herzlich purchased the Prudential-Bache Energy Income Partnership Series IV #17 ("P.B.E.I. #17") on or about April 9, 1987, whereby prior to and leading up to the purchase of this investment, Claimant began to express to Mr. Wechsler a desire for a hedge against inflation and increased income. Respondent further maintained the P.B.E.I. #17 was a limited partnership designed to acquire interests in producing oil and gas properties located in the

continental United States for the primary purpose of providing cash distributions to limited partners from the date of oil and gas production. Respondent contended that no assurance was ever given that partnership payout would be achieved despite the projected return. Respondent further contended that Mr. Wechsler discussed the risk factors with Claimant associated with the investment and at no time did he say there were no risks involved or that Claimant was guaranteed a return of 15% or better, at which time, after discussing the objectives and attendant risks of P.B.E.I. #17, Claimant authorized the purchase. Respondent asserted that the prospectus as well as a client confirmation were mailed to Claimant following the transaction, whereby the prospectus fully outlined all the risks and circumstances involved in the investment. Respondent further asserted that Claimant was truthfully and fairly advised of all risks associated with his investment, he authorized, accepted and ratified the transaction of which he now complains and any unrealized loss sustained by Claimant is attributable to market conditions and to his own investment decision, not to any action or inaction on Respondent's part.

RELIEF REQUESTED

Claimant Allen Herzlich requested \$10,000.00 in actual damages.

Respondent Prudential Securities, Inc. requested the claim be dismissed in its entirety and costs be awarded in their favor.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc L. Ripp, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 3, 1992 and by the Respondent on February 16, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant Allen Herzlich against Respondent Prudential Securities, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Allen Herzlich shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARC L. RIPP, ESQ.**, be hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Marc L. Ripp, Esq.
Signature of Arbitrator

DATE OF DECISION: May 24, 1993

STATE OF: New Jersey
SS:

COUNTY OF: Essex

On this, 24 day of May, 1993, before me personally appeared Marc L. Ripp, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Carol L. Uzzardi

CAROL L. UZZARDI
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 1995