

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Donald and Laura Tyree

93-00083

Name of Respondent

Prudential Securities Incorporated

REPRESENTATION

For Claimants: Donald and Laura Tyree were represented by Steven J. Gard, Esq. and Sandra L. Goddard, Esq. of Page & Bacek, located in Atlanta, Georgia.

For Respondent: Prudential Securities Incorporated was represented by David D. Sterling, Esq., Richard Josephson, Esq. and Jeff Elkin, Esq. of Baker & Botts, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: January 11, 1993.

Claimants' Submission Agreement signed on: August 30, 1992.

Statement of Answer filed by Respondent Prudential Securities Incorporated on: March 4, 1993.
Respondent Prudential Securities Incorporated's Submission Agreement signed on: March 4, 1993 by Donald R. Littlefield, Assistant Vice President, Prudential Securities Incorporated.

HEARING INFORMATION

Pre-Hearing Conference:

None Held.

Hearing Dates/Sessions:

August 18, 1993 for Two (2) sessions;
August 19, 1993 for Two (2) sessions;
August 20, 1993 for Two (2) sessions;
September 1, 1993 for Two (2) sessions;
September 2, 1993 for Two (2) sessions; and
September 3, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants Donald and Laura Tyree ("Tyrees") alleged that Respondent Prudential Securities Incorporated ("Prudential") fraudulently induced the Tyrees to invest almost half their liquid assets in unsuitable, highly speculative limited partnership investments or funds, including the following: Prudential-Bache Energy Growth Fund 4; Jones Intercable Fund 14-B; Fogelman Secured Equity LP; Pru-Bache High Yield Fund; and the Prudential-Bache Energy Income L.P. P-22. The Tyrees specifically alleged that:

1. In July of 1988, the Tyrees opened an account with Prudential with the funds received from a lump sum payment arising from the wrongful death of one of their children. The Tyrees were unsophisticated investors with minimal investment experience;
2. The Tyrees advised Prudential that their objectives were the protection of principal, and then to provide income and growth. Prudential falsely represented that the investments they recommended were safe, would protect their principal, minimize their risk and provide good income and growth. Instead, the investments recommended were speculative investments that improperly exposed the Tyrees to a high degree of risk and were inherently unsuitable for the Tyrees;
3. Prudential fraudulently concealed the Tyrees' losses in the limited partnerships by listing the Tyrees' cost basis as the market value, and not reflecting the decline in value;
4. The limited partnership interests were part of a series of direct products marketed by Prudential's Direct Investment Group, which falsely marketed many of its products as safe, conservative investments, similar to CDs, but with higher returns. Prudential's primary motivation to market these investments were to generate high fees and commissions.

Based upon the above allegations, the Tyrees asserted claims for violation of the Texas Securities Act; violation of the federal RICO Act; negligence and breach of the NASD Rules of Fair Practice and the Rules of the New York Stock Exchange; breach of contract; breach of fiduciary duty; common law fraud and misrepresentation; and violations of the Texas Deceptive Trade Practices Act.

Respondent Prudential denied the material allegations of the Statement of Claim, alleging that:

1. The Tyrees' Prudential broker prepared an illustrative total investment plan for the Tyrees after they represented that they wanted to change their lifestyle as a result of the settlement proceeds. The broker had at least one personal meeting with the Tyrees and several telephone conversations before the initial investments. When the Tyrees opened their account, they represented their investment objectives as safety of principal, tax sheltered income, long-term growth and income;
2. The broker explained in detail the nature of and the risks associated with each of the investments and the Tyrees received a prospectus which described the relevant risks of the investments. The Tyrees specifically authorized each of the investments complained of and were fully suitable for the investments;
3. During the two and a half years the Tyrees account was at Prudential, they never complained of the transactions, and continue to maintain an account with the former Prudential broker who serviced their account;
4. The Tyrees are "cherrypicking" by ignoring the investments which were profitable and exaggerating the losses in other investments;
5. The monthly statements did not misrepresent the values of the Tyrees' limited partnership interests because at the inception of the investments, the monthly statements stated that the prices were for informational purposes only and represented the original purchase price; and
6. The Tyrees were not overly concentrated in direct investments which represented only 21 % of their Prudential portfolio.

In addition, Prudential asserted several defenses, including the following:

1. The claims are barred by the applicable Statute of Limitations and by the doctrines of waiver, ratification and estoppel;
2. The damages complained of were proximately caused by extraordinary and unforeseeable market conditions; and
3. The Tyrees have not stated a claim upon which relief can be granted.

RELIEF REQUESTED

Claimants requested entry of an award against Respondent Prudential for actual damages in excess of \$340,000.00, or in the alternative, rescission of the Tyrees' interest in the Pru-Bache Energy Growth Fund 4, Fogelman Secured Equity LP 1, and Jones Intercable TV Fund 14-B and actual damages sustained from their investment in Pru-Bache High Yield Fund; for punitive damages in an amount to be determined by the panel; for treble damages pursuant to Prudential's violation of the federal RICO laws; for all of the costs, expenses and disbursements, including attorneys' fees, associated with this arbitration proceeding; for pre-award and post award interest; and for such other relief as the arbitration panel deemed just and proper.

Respondent Prudential requested that the Panel determine that the Tyrees' claim was without merit and that the Tyrees take nothing on their claims.

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.

AWARD

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

1. The Statement of Claim is hereby dismissed and denied in their entirety, and the Claimants shall take nothing on their claims; and
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Twelve (12) hearing sessions x \$1,000.00 per session = \$12,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and

the \$1,000.00 hearing session deposit previously deposited by the Claimants, Donald and Laura Tyree. Claimants Donald and Laura Tyree are liable for and shall pay to the NASD additional forum fees in the sum of \$11,000.00.

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

Concurring Arbitrators' Signatures

Name

Date

George T. Barrow, Esq.
Public Arbitrator
Chairperson

s/s John W. Field
John W. Field
Public Arbitrator

November 3, 1993

s/s Robin S. Novak
Robin S. Novak
Industry Arbitrator

November 2, 1993

Date of Service on Parties: 11-10-93