

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Fannie Victor

and

93-00160

Name of Respondent

Prudential Securities, Inc. f/k/a
Prudential-Bache Securities, Inc.

REPRESENTATION OF PARTIES

Fannie Victor ("Claimant") was represented by Stuart C. Goldberg, Esq., Austin, Texas Rosemary J. Shockman, Esq. and John N. McKeegan, Esq. of Shockman & McKeegan, Scottsdale, Arizona.

Prudential Securities, Inc. ("Respondent") was represented by Tom Galbraith, Esq. and Robert F. Roos, Esq. of Lewis & Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 15, 1993. Claimant filed an Amended Statement of Claim and Answer to Prudential's Motion to Dismiss with the NASD on or about June 9, 1993. The Submission Agreement of Claimant Fannie Victor was signed on December 11, 1992 by Rhonda Silverman, Power of Attorney for Fannie Victor.

A Statement of Answer was filed with the NASD by Respondent Prudential Securities, Inc. on or about March 12, 1993. A Motion to Dismiss was filed with the NASD on or about June 9, 1993. A Reply in Support of Motion to Dismiss was filed with the NASD on or about July 7, 1993. An Answer to Fannie Victor's Amended Statement of Claim was filed with the NASD on or about November 22, 1993. The Submission Agreement of Respondent Prudential Securities, Inc. was signed on February 3, 1993 by Stuart Abram.

HEARING INFORMATION

The hearing was held on Tuesday, November 30, 1993 for two (2) sessions, Monday, December, 27, 1993 for two (2) sessions, Tuesday, December 28, 1993 for two (2) sessions.

and Wednesday, December 29, 1993 for three (3) sessions in Scottsdale, Arizona for a total of nine (9) sessions.

CASE SUMMARY

Claimant alleged that she could not see the account opening documents because her sight is limited to what she could see through a powerful magnifying glass. Claimant alleged that at the time her account was opened she did not understand that she was buying partnerships and could not read or comprehend the complexities of the investments as set forth in the prospecti. Specifically, Claimant alleged that the Prudential-Bache Energy Income Limited Partnership ("P-8") and other limited partnerships she purchased were marketed in a fraudulent manner in which the following four principal written misrepresentations were made:

- * misrepresenting speculation as "very low risk";
- * misrepresentations of "an enviable track record";
- * mischaracterizing "distributions" as "income"; and
- * misrepresentations of "tax free income".

Claimant further stated that her principal investment objective was income and utmost safety since her only other income was social security.

Respondent stated that although the Claimant was elderly when she opened her account, she was competent, able to understand the significance of her investment decisions and to read and comprehend the prospectuses provided to her. Respondent also stated that the Claimant was a careful, intelligent individual who was fully capable of making and did make informed decisions regarding her investments. It was further stated that the Claimant was satisfied with her investments for many years, that the Claimant had withdrawn over \$68,000.00 from her account and maintained an account balance excluding the investments at issue in this proceeding of \$47,180.52 (as of January 31, 1993). Respondent asserted the following affirmative defenses:

- * one or more of the claims may be barred by the applicable statutes of limitation or by §15 of the NASD Code of Arbitration Procedure;
- * that the Claimant may have ratified each and every transaction at issue in this matter;
- * that the Claimant authorized the transactions at issue in this matter;
- * assumption of the risk; and
- * estoppel.

RELIEF REQUESTED

Claimant requested an award against Prudential Securities, Inc. in the amount of \$110,415.40, plus punitive damages as set by the arbitrators, pre-judgment interest and attorney

fees and for such other and further relief as the arbitrators may deem just, fair, reasonable and in the interests of justice.

Respondent requested that all of the claims asserted by the Claimant be denied.

OTHER ISSUES CONSIDERED & DECIDED

Respondent filed a Motion to Dismiss the claims based upon §15 of the NASD Code of Arbitration Procedure alleging that the claims were ineligible for arbitration because the investments were made more than six (6) years prior to filing the claim with the NASD. Claimant responded to the motion and asserted that the respondent made continuing misrepresentations on the monthly account statements concerning the valuation of the investments made for claimant and additionally asserted that pursuant to §18(b) of the NASD Code of Arbitration Procedure, the P-8 partnership was eligible for arbitration because it was the subject of a potential class action in which claimant was a potential member of the class. The NASD issued a preliminary decision granting the motion as to purchases made on or before January 14, 1987. The NASD, in its initial determination, stated that the parties could re-raise the issue with the panel of arbitrators.

The §15 issue was reasserted at the hearing on November 30, 1993 before the panel of arbitrators. The panel reversed the preliminary NASD determination regarding the P-8 partnership, finding that §18(b) of the NASD Code of Arbitration was applicable to this investment and all allegations regarding that investment were eligible for arbitration.

Claimant also filed a Motion for Summary Judgment with the NASD. Respondent filed a Reply to the Motion for Summary Judgment. Claimant withdrew the Motion for Summary Judgment at the hearing on November 30, 1993.

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 N.A.S.D.

AWARD

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

1. Prudential is liable for and shall pay to Victor, as compensatory damages, for the P-8 partnership, the sum of Seventy nine thousand five hundred dollars (\$79,500.00), which sum is inclusive of interest, costs and attorney's fees. The panel reviewed the parties' hearing

memoranda and determined that authority existed under Arizona law for an award of costs and attorney's fees in this matter;

2. Victor's claims for punitive and treble damages are denied and dismissed in their entirety; and,

3. With respect to Victor's claims on Almahurst 1, First Capital 10 and Polaris 1, the panel holds that these investments were ineligible for submission to arbitration in accordance with §15 of the NASD Code of Arbitration. The panel dismisses these claims without prejudice pursuant to §16 of the NASD Code of Arbitration Procedure. Victor may pursue relief on these investments through the claims process established with the Securities and Exchange Commission or in any other arena (except the NASD Arbitration Forum) that may be available to her.

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 \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Respondent shall directly reimburse Claimant for these sums and is assessed additional Forum Fees in the amount of \$6000.00. Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

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

/s/ Matthew R. Gould
Matthew R. Gould, Esq.
Public Arbitrator, Presiding Chair

February 11, 1994
Dated

/s/ Robert C. Hubbard
Robert C. Hubbard
Public Arbitrator

February 11, 1994
Dated

/s/ Irving Mindes
Irving Mindes
Industry Arbitrator

February 11, 1994
Dated

Date award served on the parties by the NASD: February 14, 1994