

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

John N. Boden

v.

93-00248

Name of Respondent

Prudential Securities, Inc. and
Abe Borenstein

REPRESENTATION

For Claimants: John Post, Esq., of the law firm of Post, Polack & Goodsell, P.A., Roseland, NJ

For the Respondents: Brian Amery, Esq., of the law firm of Bressler, Amery & Ross, Respondents' Morristown, NJ

CASE INFORMATION

Statement of Claim filed: January 25, 1993

Amended Statement of Claim filed: February 8, 1994

Claimant's Submission Agreement signed on: January 20, 1993

Statement of Answer filed: November 16, 1993

Respondent Prudential Securities, Inc.'s Submission Agreement signed on: February 2, 1994

Respondent Abe Borenstein did not execute a Uniform Submission Agreement as required by Section 25 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing dates/sessions:

Pre-Hearing Conferences:	March	09, 1994	1 Session
	May	10, 1994	1 Session
Hearing Sessions:	June	12, 1995	2 Sessions
	June	13, 1995	2 Sessions
	June	14, 1995	2 Sessions
	September	6, 1995	2 Sessions
	September	7, 1995	2 Sessions
	September	8, 1995	2 Sessions
	October	5, 1995	2 Sessions
	October	6, 1995	2 Sessions
	December	7, 1995	2 Sessions
	December	8, 1995	1 Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant, John N. Boden ("Mr. Boden"), alleged that he opened securities brokerage accounts with Respondent, Prudential-Bache Securities, Inc., now known as Prudential Securities Incorporated ("Prudential"), in 1986 and 1987. Mr. Boden alleged that Prudential engaged in a fraudulent and deceptive scheme whereby Respondents sold unsuitable limited partnerships interests to elder investors based on materially false and misleading representations pertaining to the risks, conflicts of interests and performance of such limited partnerships.

Mr. Boden alleged that Prudential, through Respondent Abe Borenstein ("Mr. Borenstein"), the Account Executive of Mr. Boden's accounts, inappropriately invested his retirement money in the aforementioned limited partnerships. Mr. Boden specifically alleged that Mr. Borenstein structured his portfolio with speculative and illiquid limited partnerships as follows: Prudential Bache Energy Growth Fund II, Fogelman Secured Equity L.P., Fogelman Mortgage L.P. I, Fox Strategic Housing Income L.P., Growth Hotel Investors II and Polaris Aircraft Income Fund. As a result, Mr. Boden alleged that he lost a substantial part of his investment, together with lost interest and incidental damages.

Mr. Boden also claimed that these limited partnerships were unsuitable for his accounts in light of his investment objectives and his age. Mr. Boden alleged that Mr. Borenstein was aware that he was not to take risks with Mr. Boden's retirement money; that Mr. Boden wanted a safe haven which could generate some additional income until he needed the money; that Mr. Boden was going to retire within a few months and he and his wife would rely on the invested money

for their livelihood; and that Mr. Boden would soon be eligible to withdraw his retirement money.

In addition, Mr. Boden alleged that he was not cognizant of the risks associated with various types of securities. Moreover, Mr. Boden alleged that he explicitly placed his trust in the reputation and skill of Prudential and that each time he raised questions regarding his accounts, he alleged that he was lied to, abused, and taken advantage of. Specifically, Mr. Boden alleged the following: his signature was forged on a Customer Agreement; he never authorized any of the trades executed by Mr. Borenstein; and he was falsely assured that his portfolio consisted of safe investments which would provide long term growth. Specifically, Mr. Boden alleged that his monthly account statements were extremely misleading because they continuously reported the value of the limited partnerships as being equal to the initial purchase price. Hence, Mr. Boden alleged that he had no way of knowing that the value of his accounts were rapidly declining.

Mr. Boden further alleged that he was exposed to an unexpected tax liability because Prudential illegally transferred assets from his accounts on an unauthorized basis. Mr. Boden claimed that certain transfers were illegal because the transfers exceeded the maximum yearly contribution that is allowed to be made into a pension account as per the Internal Revenue Code.

SUMMARY Mr. Boden further alleged that he never received the prospectuses or any other Offering Materials prior to Mr. Borenstein's execution of the limited partnerships at issue. Materials prior to Mr. B.

Finally, Mr. Boden alleged that Respondents and Mr. Borenstein, jointly and severally, were liable to him for breach of fiduciary duty, breach of contract, negligence, and fraud.

Respondents maintained that Mr. Boden was generally sophisticated in business affairs. Specifically, Respondents maintained that Mr. Boden informed Mr. Borenstein that he had 29 years of experience in the broadcasting industry and that he had formed a corporation to acquire profitable radio stations throughout the country.

Respondent further maintained the following: Mr. Borenstein's recommendation of the purchase of \$50,000 worth of Growth Hotel Investors II was consistent with Mr. Boden's investment objectives; such purchase was executed only after discussing the investment with Mr. Boden; a prospectus was mailed to Mr. Boden with the confirmation statement for such purchase; and that approximately two months later, Mr. Boden authorized an additional purchase of \$50,000 worth of Growth Hotel Investors II.

Respondents also maintained that Mr. Boden was 57 years of age and desired to delay taking distributions from his retirement money until age 70 1/2. Respondents maintained that Mr. Boden was looking at long-term investments for the next 13 years and that Mr. Borenstein recommended several suitable and appropriate limited partnership investments which were designed to generate income with potential for long-term growth when the underlying assets of such partnerships were sold.

Respondents also contended that prior to the purchase of the first direct investment in Mr. Boden's retirement account, Fogelman Mortgage L.P.I., Mr. Borenstein advised Mr. Boden that no secondary market existed for the investment and that Mr. Boden was aware that each of the direct investments purchased in his accounts were illiquid.

Respondents finally denied each and every allegation of wrongdoing, including Mr. Boden's allegations of breach of fiduciary duty, forgery, unauthorized trading and unsuitable trading.

RELIEF REQUESTED

Claimant requested:

1. **Compensatory damages of \$645,00.00 for Claimant's loss of principal investment, together with interest thereon, plus additional general, consequential and incidental damages according to proof;**
2. **Exemplary and punitive damages for Respondents' fraud, breach of fiduciary duty and conversion;**
3. **Treble damages under RICO;**
4. **General damages for all injuries resulting from Respondents', negligence, fraud, breach of fiduciary duty, and breach of contract;**
5. **General damages to indemnify Claimant for any liability he has toward the IRS or any other party due to Prudential's conduct;**
6. **Disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents as a result of their conduct;**
7. **Costs and attorney's fees; and,**
8. **Any other relief the arbitrators deem just and equitable.**

Respondents requested:

1. **Dismissal of all claims and an assessment of costs and fees against Claimant.**

OTHER ISSUES CONSIDERED AND DECIDED

1. Respondent, George Ball's, Motion to Dismiss all claims as asserted against him in the Statement of Claim was granted by the panel of arbitrators.
2. 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. Respondent, Prudential Securities, Inc., be and hereby is liable and shall pay to the Claimant the sum of \$260,447.00, inclusive of attorney's fees and costs.

2. All claims against Respondent Borenstein are hereby dismissed.

3. All other requests for relief are dismissed.

FORUM FEES

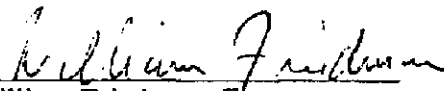
Pursuant to Section 43(c) or 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Pre-Hearing Conferences:	\$ 600.00	(2 Sessions x \$300)
Hearing Session Fees:	\$19,000.00	(19 Sessions x \$1000)
Total Forum Fees:	\$19,600.00	

- 1) Claimant is assessed the amount of \$9,800.00 representing one-half of the total forum fees due, less \$1000.00 previously paid, leaving \$8,800.00 due. Claimant be and hereby is liable and shall pay to the NASD the sum of \$8,800.00.
- 2) Respondent, Prudential Securities, Inc., is assessed the amount of \$9,800.00 representing one-half of the total forum fees due. Respondent, Prudential Securities, Inc., be and hereby is liable and shall pay to the NASD the sum of \$9,800.00.

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

ARBITRATORS' SIGNATURES


William Friedman, Esq.
Public Chairperson

Claus Papenheimer
Public Arbitrator

Rudolph Barth
Industry Arbitrator

Date of decision: March 13, 1996

I, **William Friedman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

William Friedman
William Friedman, Esq.

I, **Claus Papenheimer**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

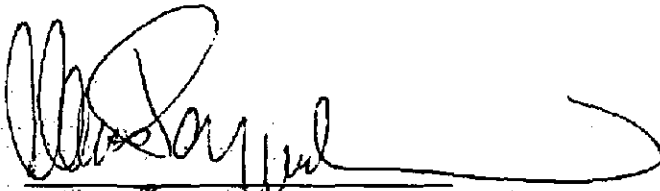
Claus Papenheimer
Claus Papenheimer

I, **Rudolph Barth**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

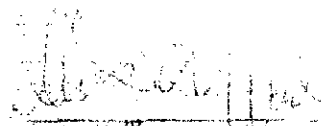
Rudolph Barth
Rudolph Barth

ARBITRATORS' SIGNATURES

William Friedman, Esq.
Public Chairperson

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Claus Papenheimer
Public Arbitrator

A faint, handwritten signature in dark ink, appearing to read 'Claus Papenheimer', with a long horizontal flourish extending to the right.

Claus Papenheimer
Public Arbitrator

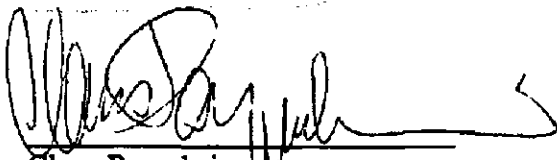
Rudolph Barth
Industry Arbitrator

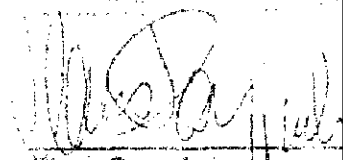
Date of decision: March 13, 1996

I, William Friedman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

William Friedman, Esq.

I, Claus Papenheimer, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.


Claus Papenheimer


Claus Papenheimer

I, Rudolph Barth, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

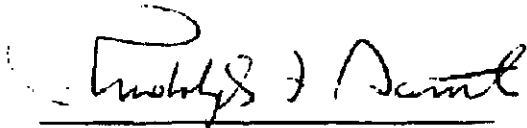
Rudolph Barth

ARBITRATORS' SIGNATURES

William Friedman, Esq.
Public Chairperson

Claus Papenheimer
Public Arbitrator

Claus Papenheimer
Public Arbitrator



Rudolph Barth
Industry Arbitrator

Date of decision: March 13, 1996

I, **William Friedman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

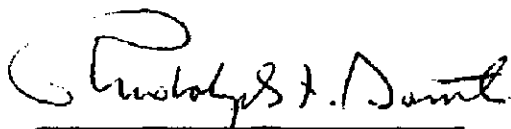
William Friedman, Esq.

I, **Claus Papenheimer**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Claus Papenheimer

Claus Papenheimer

I, **Rudolph Barth**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.



Rudolph Barth