

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Shirley L. Barto and Leon D. Barto

Case No. 93-00614

Name of Respondent(s)

Prudential-Bache Securities Inc.
John Emery
Prudential Insurance Company of America
Richard McFarren

REPRESENTATION

For Claimants, Shirley L. Barto and Leon D. Barto (the "Bartos"): George W. Papp, Melbourne, Florida.

For Respondents, Prudential Securities, Inc. ("Prudential"), John Emery ("Emery"), Prudential Insurance Company of American ("PICA") and Richard McFarren ("McFarren"): Brian D. Elias, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: February 19, 1993. Claimants' Submission Agreement signed: February 12, 1993.

Respondents, Prudential, Emery, PICA and McFarren's, Statement of Answer filed: April 14, 1993.

HEARING INFORMATION

On April 20, 21 and 22, 1994; June 9 and 10, 1994; in Fort Lauderdale, Florida, hearings lasting 11 sessions were conducted.

CASE SUMMARY

Claimants alleged the following causes of action in connection with the sale of certain limited partnership by Respondents to Claimants: sale of unsuitable securities, failure by Respondents to furnish prospectuses to Claimants, breach of fiduciary responsibilities, common-law fraud, violations of securities regulations and committing acts culpable under the RICO Act.

Respondents denied all allegations of wrongdoing and alleged that based on the financial circumstances and concerns of the Claimants, the recommended investments were suitable and that the Claimants did receive the prospectuses prior to their investments in the limited partnerships.

Respondents alleged the affirmative defenses of: statute of limitations; failure to state a claim; ratification; waiver; estoppel; laches; and, the claim is time barred under Section 15 of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimants requested compensatory damages of \$72,262.00 which reflects the present value of Claimants' investment after reduction for all cash distributions received and residual values, treble damages in the amount of \$216,786.00 and punitive damages in the amount of \$1,000,000.00.

Respondents requested dismissal of all claims plus that forum fees be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. During the initial stages of the proceedings, Claimants voluntarily dismissed Respondents, PICA and McFarren with prejudice.
2. The ruling by the Director of Arbitration on the Respondents' Section 15 Motion was affirmed by the Panel.
3. The Motion presented by Respondents on the statute of limitation issues were denied.
4. 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.

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AWARD

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

1. Respondents, Prudential and Emery, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for treble damages and punitive damages is denied.

OTHER COSTS

Other than the Forum Fees detailed below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$11,000.00 (11 sessions x \$1,000.00 per session).
2. Claimants are hereby assessed \$11,000.00 for which the NASD shall retain the \$5,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$6,000.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

1s1
Gary L. Tidwell, Esq.

Public

1s1
Fred B. Schack

Industry

1s1
Gordon K. Grandy

Public

Date of Decision: 7/8/94