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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Carl R. and Wilma M. Berry

Case No. 93-00710

Name of Respondent(s)

Prudential Securities, Inc.

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REPRESENTATION

For Claimants, Carl and Wilma Berry ("the Berrys"): James D. Keeney, Esq. of Namalk, Clark & Keeney, Sarasota, Florida.

For Respondent, Prudential Securities, Inc. ("Prudential"): Delmer Gowling, Esq. of Honigman Miller Schwartz and Cohn, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: February 26, 1993. Claimants' Submission Agreement signed: January 26, 1993.

Respondent's Statement of Answer filed: June 29, 1993.

HEARING INFORMATION

On June 10, 1994, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On October 5, and October 6, 1994, in Tampa, Florida; hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimants alleged that purchases of Prudential Bache Energy Income Limited Partnerships and other securities were made based on misrepresentation made to them at the time of sale, and were unsuitable investments for their investment objectives and circumstances.

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Respondent denied all allegations of wrongdoing and alleged that Claimants allegations of misrepresentation and unsuitability is without merit.

Respondent alleged the affirmative defenses of applicable statute of limitations, Claimants ratified and/or waived the right to dispute the handling of their account, Claimants must establish that they acted with reasonable diligence, Claimants cannot satisfy the elements in any of their cause of actions.

#### **RELIEF REQUESTED**

Claimants requested an Award of compensatory damage, treble damages, punitive damages, attorney's fees, statutory interest and costs.

Respondent requested immediate dismissal with prejudice of Claimants' Statement of Claim; for costs of suit; and for such other and further relief the Arbitrators deem just and proper.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent filed a Motion to Dismiss under Section 15 of the Code with respect to Claims not dealing with limited partnerships. Motion was granted with respect to allegations of wrong doing that occurred before February 26, 1987, and denied with respect to allegations of wrongdoing that occurred on or after February 26, 1987.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent, Prudential, is found liable, and shall pay to the Claimants the amount of \$71,400.00.

Claimant's requests for treble damages, punitive damages, attorney's fees and statutory interest are denied.

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Respondent's request for costs and other relief is denied.

Claimants' request for costs is granted and Respondent shall pay the Claimants a total of \$5,600.00 for such costs.

#### **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**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,150.00 (one pre-hearing conference x \$150.00 plus five sessions x \$1,000.00 per session).

Respondent, Prudential, is hereby assessed \$5,150.00. \$600.00 of which shall be paid directly to the Claimants and \$4,550.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the session deposit of \$600.00 paid by the Claimant.

The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.

Respondents shall reimburse the Claimant's \$250.00 for the non-refundable filing fee.

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

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Concurring Arbitrators' Signatures

/s/  
John F. Snyder, Esq.

Public

/s/  
Robert A. Sauerberg

Public

/s/  
Thomas W. Krejci

Industry

Date of Decision: October 28, 1994