

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Jane Anne Emerson et al.

93-00814

Name of Respondent

Prudential-Bache Securities Inc.

REPRESENTATION

For Claimants, Jane Anne Emerson, Jane Gladden Emerson, Jonathan Emerson and Paul E. Emerson: James D. Keeney, Esq., Namack, Clark and Keeney, Sarasota, Florida.

For Respondent, Prudential Securities, Inc. ("Prudential"): Donald R. Littlefield, Esq. of Prudential Securities, Inc., Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: 2/25/93.

Claimant's Submission Agreement signed on: 1/21/93.

Statement of Answer filed by Respondent: 9/30/94.

Respondent did not sign a Submission Agreement or Corporate Acknowledgment.

HEARING INFORMATION

Hearing Dates/Sessions: 2/23/95-two (2) sessions.
2/24/95-two (2) sessions.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimants alleged that they purchased limited partnerships from the Respondent on various dates beginning on April 3, 1986, and ending on September 1, 1988; that Respondent and its agents purposely misrepresented these investments to Claimants, stating that they were safe, tax-advantaged investments that had a good potential for growth and a good history of paying reliable regular income, when in fact Respondent knew that each of these claims were false; that these misrepresentations were part of a vast criminal conspiracy actionable under state and federal RICO and civil theft statutes, and also actionable under common law fraud, negligence, and misrepresentation. Claimants also alleged that they received a Prudential-Bache Securities newsletter in September 1986, recommending "single premium life insurance" as an appropriate investment for persons with their investment objectives, and that said newsletter allegedly

9504133

advised Claimants that if they were interested in this type of investment they should "ask your Account Executive." Claimants further alleged that they attended several investment seminars sponsored by Respondent and at one of these seminars their Prudential Account Executive, Dan Holum, introduced them to Richard Sadowski, who he identified as "one of us" and later invited Claimants to meet with him and Sadowski in his Prudential office to discuss the tax advantages of single premium life insurance. Claimants further alleged that respondent negligently or fraudulently caused Holum and Sadowski to sell Claimants two variable life insurance policies which they allegedly fraudulently misrepresented to Claimants as being suitable investments guaranteed to "carry themselves." Claimants also alleged that as a proximate result of Prudential's negligence and the fraudulent acts and statements of its agents, Claimants lost their entire investment in these products.

Respondent denied all allegations of wrongdoing and alleged that the Statement of Claim was deficient and did not apprise Prudential of the claims being asserted. Respondent also alleged that the claims being asserted were ineligible for arbitration pursuant to Section 15 of the NASD Code of Arbitration Procedure as previously ruled by the Director of Arbitration; that the Claims were barred by the statute of limitations in the State of Arkansas (the residence of the Claimants at the time of the relevant sales and the State in which the sales were made) and that the Arkansas statute bars claims after 5 years. Respondent further denied that any misrepresentations were made to Claimants regarding their purchases; that each and every alleged misrepresentation was addressed in the prospectus for the investments and contended that the claims were also barred by the doctrines of waiver, ratification, and estoppel. Respondent further denied that the Claimants suffered damages as alleged in the Statement of Claim. Further, Respondent maintained that it did not sell the insurance products which were identified by the Claimants in their Statement of Claim nor did Prudential employ the individual who did sell the products; that in the alternative, even if Prudential was liable for the sale of the products by another company and by the employee of another company, then such claims were barred by the limitations period in the State of Arkansas and by Section 15 of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested relief including but not limited to the rescission or in the alternative compensatory damages in the amount of \$132,872.00, plus treble damages in the amount of \$398,616.00, plus punitive damages, attorneys fees, and costs.

Respondent requested dismissal of the claims and such other relief to which it is entitled.

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 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, is found liable and shall pay to the Claimants the amount of \$72,402.00 plus interest at the legal rate of 6% per annum in the amount of \$35,908.00 from the date of investment to the date of determination, less distributions received by Claimants of \$11,346.00 for a total due to the Claimants of \$96,964.00.
2. Claimants' requests for attorneys' fees, punitive damages and RICO damages are hereby denied.
3. All other claims are hereby denied.

OTHER COSTS

Apart from Forum Fees addressed below, the parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four (4) hearing sessions X \$750.00).

1. Respondent, Prudential, is hereby assessed Forum Fees in the amount of \$3,000.00 \$750.00 of which shall be paid directly to the Claimants and the remaining \$2,250.00 to be paid to the NASD, Inc.
2. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Sherman S. Cohen, Esq.

Public/Chairman

/s/

Beverly S. Gordon, Esq.

Industry/Panelist

/s/

Elsie C. Turner, Esq.

Public/Panelist

Date of Decision: April 5, 1995