

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Rebha D. Plitt

93-00934

Name of Respondents

Prudential Securities, Inc.  
Rick S. Kirkinis

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 11, 1993, Claimant Rebha D. Plitt, by and through her counsel Barbara K. Olson, Esq. of Dickenson, Murdoch, Rex and Sloan, Boca Raton, Florida, alleged that in early 1993, an acquaintance of Claimant's had suggested Respondent Rick S. Kirkinis, a registered representative with Moore & Schley contact her, at which time, Claimant had a small liquid net worth and no previous investment experience or financial background and accordingly, she stressed to Respondent Rick S. Kirkinis that he purchase only safe, sound investments for her account. Claimant further alleged that during Respondent Rick S. Kirkinis' conduct of her account at Moore & Schley, he followed Claimant's instructions and invested in low risk investments such as U.S. Treasury certificates and bonds. Claimant contended that in August of 1986, Respondent Rick S. Kirkinis left Moore & Schley and went to work with Respondent Prudential Securities, Inc., at which time, Respondent Rick S. Kirkinis asked Claimant to transfer her account with him whereby Claimant agreed with the understanding that Claimant's investment objectives had not changed and that safety was still her utmost concern which Respondent Rick S. Kirkinis was well aware of this fact. Claimant further contended that during his first months at Respondent Prudential Securities, Inc., Respondent Rick S. Kirkinis abided by her instructions and conducted her account as he had at Moore & Schley, recommending safe investments such as certificates of deposits and bonds. Claimant asserted that in August of 1987, Respondent Rick S. Kirkinis called her to recommend an investment that "would provide her with a greater return than her other investments, but was just as safe as investing in a certificate of deposit", and Respondent Rick S. Kirkinis told Claimant that she would earn a high rate of interest for eight years and would then receive her total original investment back, whereby the investment Respondent Rick

S. Kirkinis was touting was Polaris Aircraft Income Fund III. Claimant further asserted that Respondent Rick S. Kirkinis did not provide a prospectus, did not explain that Polaris was a limited partnership, nor did he tell her that the investment was not liquid and he made no mention of the risk involved. Claimant argued that Respondent Rick S. Kirkinis advised her that Polaris was completely safe, and as a totally false and misleading selling point, he even compared it to a certificate of deposit, one of the few types of investments he knew Claimant was familiar and comfortable with. Claimant further alleged that trusting Respondent Rick S. Kirkinis, believing the statements he made and relying on him to protect her interests, Claimant agreed to Respondent Rick S. Kirkinis' recommendation to invest \$20,000.00 in Polaris Aircraft Income III, which was almost 20% of her total liquid net worth at the time. Claimant further contended that Respondent Rick S. Kirkinis' disregard for her investment needs and objectives, in addition to Respondent Prudential Securities, Inc. failure to supervise, caused her to sustain financial losses.

Respondents Prudential Securities, Inc. and Rick S. Kirkinis, by and through their in-house counsel, Joel Levinson, Esq., maintained that Claimant Rebha D. Plitt bases her claim on the allegation that Respondent Rick S. Kirkinis recommended the Polaris investment as one which "would provide her a greater return than her other investments, but was just as safe as investing in a certificate of deposit", among other statements whereby this claim is essentially an allegation that the firm and Respondent Rick S. Kirkinis made an untrue statement of material fact in violation of the Securities and Exchange Act of 1934 Section 10(b) and the Securities and Exchange Commission ("SEC") Rule 10b-5, since the prospectus of the partnership clearly disclosed the nature of the investment and the risk involved. Respondents further maintained that Claimant's claim should be dismissed under the applicable statute of limitations whereby the misrepresentations Claimant is alleging would have occurred at the time she invested in the partnership, which was August, 1987 and accordingly, Claimant's claim is time-barred. Respondents contended that Claimant alleges misrepresentation of material facts on an inducement for her investment in Polaris and Claimant further states a reliance on the alleged misrepresentations; however, the prospectus for Polaris was delivered to Claimant at the time she made the investment and the prospectus contains adequate disclosures regarding the risks of the Partnership. Respondents further contended that Claimant received more than adequate information with which to make an informed investment decision, and was completely aware of the type of investment she was making. Respondents asserted that the Polaris investment also met Claimant's investment objectives and the partnership intended to provide a significant increase in income relative to other investments available at the time. Respondents further asserted that in addition to Claimant having received a prospectus, Respondent Rick S. Kirkinis discussed with Claimant at length the risks of this investment, including the lack of liquidity and market risks, whereby at no time did he compare this investment to a Certificate of Deposit, nor did Respondent Rick S. Kirkinis ever say that the investment was "guaranteed". Respondents further contended that they acted reasonable and in good faith at all times and hence are not liable.

**RELIEF REQUESTED**

Claimant Rebha Plitt requested the sum of \$9,354.80 in actual damages together with attorney's fees in the amount of \$3,000.00 and interest in the amount of \$11,194.64, reflecting 10% on the principal amount, plus costs of this proceeding.

Respondents Prudential Securities, Inc. and Rick S. Kirkinis requested the claim be dismissed in its entirety and judgement be rendered in favor of Respondents.

**AWARD**

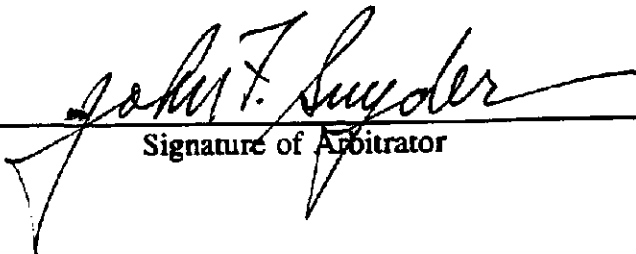
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John F. Snyder, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 3, 1993, by the Respondent Prudential Securities, Inc. on July 23, 1993 and by the Respondent Rick S. Kirkinis on May 22, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. and Rick S. Kirkinis are jointly and severally liable and shall pay to the Claimant Rebha D. Plitt the sum of \$9,904.24 in damages inclusive of costs.
2. Respondents Prudential Securities, Inc. and Rick S. Kirkinis are jointly and severally liable and shall pay to the Claimant Rebha D. Plitt the sum of \$3,000.00, representing attorney's fees.
3. The Claimant's request for interest is denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Rebha D. Plitt shall be retained by the NASD, Inc. Respondents Prudential Securities, Inc. and Rick S. Kirkinis are jointly and severally liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, JOHN F. SNYDER, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION:      October 29, 1993