

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Randi L. Berner

93-00988

Name of Respondents

Prudential Securities, Inc.  
Robert Tonnesen

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 15, 1993, Claimant Randi L. Berner, who appeared Pro Se, alleged that in April, 1985 she started investing \$2,000.00 per year in an Individual Retirement Account ("IRA") with Robert Tonnesen, Account Executive at E.F. Hutton and through April, 1988, Claimant invested in Certificates of Deposit ("CD"), Zero Coupon Bonds and Government Securities, which were all safe investments, whereby Claimant never sold, which creates additional commissions. Claimant further alleged that Respondent Robert Tonnesen left Shearson Lehman Hutton, Inc. formerly E.F. Hutton, in April, 1988 and Claimant gave Respondent Robert Tonnesen permission to open an account at Respondent Prudential Securities, Inc., at which time, Claimant transferred her portfolio. Claimant contended that Respondent Robert Tonnesen used her transferred funds to buy 683 shares of VMS Mortgage Investment Fund stock at \$10.00 per share without Claimant's permission or consent whereby she became aware of this transaction when she received the confirmation and prospectus in the mail. Claimant further contended that when she questioned Respondent Robert Tonnesen about the investment, Respondent Robert Tonnesen assured her it was a good investment. Claimant asserted that in July, 1989 her monthly statement for VMS showed a share price of \$8.125 with a yield of 7.38% and when she questioned Respondent Robert Tonnesen about the loss, Claimant was assured that it was a mistake and the yield should be 14.8%. Claimant further asserted that in July, 1991 VMS went bankrupt and became Banyon Mortgage, whereby in October, 1991 a class action suit was brought against VMS with Respondent Prudential Securities, Inc. as a limited partner and up until this time Claimant was unaware that Respondent Prudential Securities, Inc. was affiliated with VMS. Claimant argued that Respondent Robert Tonnesen should have known that the suitability of VMS in an IRA was questionable and Respondent Prudential Securities, Inc. pressured their brokers to sell VMS, thus Respondents should be held liable.

Respondents Prudential Securities, Inc. and Robert Tonnesen by and through their in-house counsel, Renee Kwait-Rettig, Esq., maintained that Respondent Robert Tonnesen has been Claimant Randi L. Berner's broker since 1985 and prior to every transaction that was made from 1985 to the present, Respondent Robert Tonnesen and Claimant have discussed the transaction in his office or on the telephone, in fact, Claimant and her husband made an annual appointment with Respondent Robert Tonnesen to discuss their IRA contribution. Respondents further maintained that this was done each of the years Respondent Robert Tonnesen was their broker and trades were done only after the annual discussion. Respondents contended that the purchase of VMS Mortgage Investment Fund on June 13, 1988 was in fact an authorized trade, which occurred after a two hour discussion in Respondent Robert Tonnesen's office, at which time, this investment was explained to Claimant prior to its purchase and was then authorized by Claimant. Respondents further contended that subsequent to Claimant's authorization of this purchase, the confirmation slip dated June 13, 1988 and prospectus were mailed to Claimant. Respondents asserted that Claimant does not deny that she in fact received a confirmation slip and a prospectus after the trade was completed. Respondents argued that even assuming, for the sake of argument, that the purchase was not initially authorized, Claimant's failure to object after receiving the confirmation and subsequent statements constitutes ratification.

#### **RELIEF REQUESTED**

Claimant Randi L. Berner requested \$6,830.00 in actual damages.

Respondents Prudential Securities, Inc. and Robert Tonnesen requested the claim be dismissed.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green, 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 8, 1993, by the Respondent Prudential Securities, Inc. on April 22, 1993 and by the Respondent Robert Tonnesen on April 19, 1993.

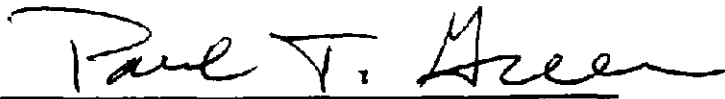
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. and Robert Tonnesen are jointly and severally liable and shall pay to the Claimant Randi L. Berner the sum of \$2,000.00 in damages.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Randi L. Berner shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **PAUL T. GREEN**, 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: September 29, 1993

STATE OF: Connecticut  
ss: Fairfield  
COUNTY OF: Fairfield

On this 25 day of September 1993, before me personally appeared Paul T. Green to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
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REPORT OF ARBITRATOR

Rationale as follows: 1) Claimant Randi L. Berner was not an experienced investor. Respondent Robert Tonnesen had influence and responsibility under "Know-Your-Customer" rule. 2) VMS units not unsuitable per se, but placing over 60% of the account in this single security was highly imprudent and unsuitable. Respondent Robert Tonnesen had responsibility to see that the account was properly diversified. An acceptable position would have been about 15% of the account. 3) Base damages are \$3,925.00, or 75% of net out-of-pocket damages of \$5,233.00. 4) Award reduced to \$2,000.00 because of Claimant Randi L. Berner's long delay in taking action.

Randi L. Berner