

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Charley H. and Nedra L. Clayton

and

NASD Case Number 93-01119

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION OF PARTIES

Charley H. and Nedra L. Clayton ("Claimant") were represented by James D. Jameson, Esq. of Vic Fields & Associates located in Austin, TX.

Prudential Securities, Inc. ("Respondent") was represented by Terry Ross, Esq. and Stacey Garrett, Esq. of Keesal, Young & Logan located in Long Beach, CA.

CASE INFORMATION

The Statement of Claim was filed on or about March 22, 1993.

The Submission Agreement of Claimants was signed on April 19, 1993.

The Statement of Answer was filed by Respondent on or about May 15, 1993.

The Submission Agreement of Respondent was signed on June 15, 1993 by John H. Bluher, Vice President and Deputy Regional Counsel.

HEARING INFORMATION

The hearing was held in Houston, TX on the following dates:

- March 25, 1996 for two (2) sessions
- March 26, 1996 for two (2) sessions
- March 27, 1996 for two (2) sessions

CASE SUMMARY

Since opening accounts at Prudential Securities, Inc. ("Prudential") in 1985, Charley H. and Nedra L. Clayton ("Clayton") allegedly sought and relied upon the expert tax, investment, business planning and financial counseling services provided by Prudential by and through their representative, Donald S. Robbins ("Robbins"). Clayton contended that during various discussions, Robbins made misrepresentations and failed to disclose relevant material facts concerning the financial plan he devised for them and about the investments to be purchased by the Claimants. Clayton alleged that the misstatements and omissions of Robbins were made for the purpose of inducing the Claimants to enter into limited partnerships and other restricted securities transactions. In particular, Clayton complained about Robbins' advice and direction to invest in VMS National Residential Portfolio I L.P., Almahurst Bloodstock L.P.5 and Sillerman Magee Communications Management Corporation. Claimants alleged that Prudential failed to perform appropriate due diligence to determine that the limited partnerships and restricted stock were unsuitable for Claimants. Claimants further alleged that Prudential repeatedly represented that the investments had net worth or direct investment values corresponding to the total amount invested yet the investments proved to be virtually worthless. Claimants made other specific allegations against the Respondents including, but not limited to, negligent misrepresentation, common law and statutory fraud, violations of Sections 17.4(6)(3),(5),(7), (12) and (23) of the Texas Deceptive Trade Practices-Consumer Protection Act, tortious violations of fiduciary duty and the common law duties of good faith and fair dealing and violations of Texas and federal securities laws.

In its Answer, Prudential Securities, Inc. denied the allegations of wrongdoing contained in the Statement of Claim and denied liability to the Claimants for any damages. Prudential asserted that the claims by Clayton were ineligible for submission to arbitration in accordance with Section 15 of the Code of Arbitration Procedure since the investments giving rise to this dispute were purchased more than six years prior to the filing of the Statement of Claim. Respondent maintained that Claimants purchased Almahurst Bloodstock L.P.5 on December 18, 1995 and VMS National Residential portfolio on November 19, 1986.

RELIEF REQUESTED

Charley H. Clayton and Nedra L. Clayton requested an award in the total amount of \$738,589.00 which includes \$246,196.00 in actual damages as well as treble and punitive damages. The Claimants also requested interest, costs and attorneys' fees.

Prudential Securities, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Within the Statement of Answer, Prudential Securities, Inc. contended that the claims contained in the Statement of Claim were ineligible for submission to arbitration in accordance with Section 15 of the Code of Arbitration Procedure since the investments were purchased more than six years prior to the filing of the Statement of Claim. The Director of Arbitration preliminarily determined that the motion was denied, in part, and granted, in part. The Director ruled that the motion was denied in full regarding all purchases made on or after March 22, 1987 and claims regarding those purchases will be considered by the panel. The Director further ruled that the claims regarding purchases made prior to March 22, 19987 will be permitted to go to the panel but only as to the allegations of wrongdoing made after March 22, 1987. At hearing, Prudential re-raised the Motion to Dismiss to the panel. After hearing oral arguments on the motion, the arbitrators decided to hold their ruling in abeyance and continue with the hearing until completion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. The Statement of Claim submitted by Charley H. and Nedra L. Clayton is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
3. Any relief not specifically granted herein is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session. There were six (6) sessions x \$1,000.00 = \$6,000.00 in forum fees. Pursuant to Section 43(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as

forum fees the hearing session deposit in the amount of \$1000.00 previously deposited with the NASD by the Claimants, Charley H. and Nedra L. Clayton. Respondent, Prudential securities, Inc. is hereby liable for and shall pay to the Claimant, Charley H. and Nedra L. Clayton the sum of \$1,250.00 as reimbursement. Respondent, Prudential Securities, Inc. is hereby liable for and shall pay to the NASD the amount of \$5,000.00 in additional forum fees. The NASD shall retain postponement fees in the amount of \$2,000.00 previously deposited with the NASD by the Respondent, Prudential Securities, Inc.

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

Arbitrators' Signatures:

Dated:

Russell E. Rains, Esq.
Russell E. Rains, Esq.
Public Arbitrator, Presiding Chair

May 3, 1996

Charlotte F. Simpson
Charlotte F. Simpson
Public Arbitrator

May 3, 1996

— Jane E. Bates
Jane E. Bates
Industry Arbitrator

May 6, 1996

Date served by the NASD: May 9, 1996