

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harold and Eleanor Friedman

93-01409

Name of Respondents

Prudential Securities, Inc.
Elaina S. Spilove

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 7, 1993, Claimants Harold and Eleanor Friedman, who appeared Pro Se, alleged that Respondent Elaina S. Spilove, Financial Advisor with Respondent Prudential Securities, Inc. recommended the purchase of \$30,000.00 face value of Meritor Savings Bank PA Sub Cap NT 12.000 due 9/1/1998 whereby Respondent Elaina S. Spilove's recommendation to buy these notes and to buy common stock was very strong. Respondent Elaina S. Spilove claimed the common stock had more potential for gain than bonds and stated that Respondent Prudential Securities, Inc. customers were the largest purchasers of the notes, and that some of her accounts were purchasing as much as \$500,000 worth of these notes. Claimants further alleged that Respondent Elaina S. Spilove stated that Butcher & Singer, Inc. were heavy buyers. Claimants contended that Respondent Elaina S. Spilove stated that these notes were not readily available, and that she would have to check on the availability and price from "the institution desk", at which time, Claimants felt that Respondent Elaina S. Spilove was doing them a favor by getting these notes for them and that institutions were the main holders of the notes. Claimant further contended that on January 5, 1990 Respondent Elaina S. Spilove said that Roger Hillas, C.E.O. of Meritor had bought the stock for his own account, and as of December 31, 1991, there was no record of this in the Securities and Exchange Commission Official Summary of Security Transactions. Claimants asserted that on February 15, 1990 Respondent Elaina S. Spilove assured them that there was very low risk in this investment as Mellon was buying into Meritor on May 1, 1990 whereby it later turned out that Mellon was only buying some of the offices, not the company. Claimants further asserted that in 1990, the price of the common stock began to fall and they expressed concern to Respondent Elaina S. Spilove on several occasions, at which time, Respondent Elaina S. Spilove always advised them not to sell the notes and that there was little risk of a default. Claimants further alleged that finally after the exchange

of the notes for cash and common stock, they asked Respondent Prudential Securities, Inc. by and through Mr. J. Kerner, their New Account Executive, for advice on the stock, at which time, he stated he could not advise them, as Respondent Prudential Securities, Inc. did not follow the company. Claimants further contended that due to Respondent Elaina S. Spilove's mishandling of their funds and Respondent Prudential Securities, Inc. failure to properly supervise, Claimants sustained losses.

Respondents Prudential Securities, Inc. and Elaina S. Spilove by and through their in-house counsel John N. Camperlengo, Esq., maintained that Claimant Harold Friedman was introduced to Respondent Elaina S. Spilove by a mutual acquaintance in approximately 1985, and subsequently in April, 1989, Claimant Harold Friedman began contacting Respondent Elaina S. Spilove with investment ideas from sources other than Respondent Prudential Securities, Inc. Respondents further maintained that in April, 1989 Claimant Harold Friedman sought Respondent Elaina S. Spilove's ideas regarding some very speculative investments whereby Respondent Elaina S. Spilove indicated that she did not feel comfortable trading in such speculative investments; however, Claimant Harold Friedman was adamant about seeking higher yields, at which time, Claimant Harold Friedman continually boasted that he did not invest in anything without thorough scrutiny, investigation and understanding. Respondents contended that Claimant Harold Friedman indicated to Respondent Elaina S. Spilove an interest in investing in the hopeful turnaround of Meritor and inquired about Meritor's common stock, at which time, Respondent Elaina S. Spilove indicated that Meritor was issuing bonds which would provide income of 12% and that these bonds could be purchased at a discount. Respondents further contended that Respondent Elaina S. Spilove indicated to Claimants that there was risk associated with the investment, as they were being purchased in a bank that was suffering from well published financial difficulty. Respondents asserted that in order to purchase the amount Claimants were interested in purchasing, \$30,000.00, their order would have to be pooled with other orders from the branch and purchase them from the trading desk, at which time, Respondent Elaina S. Spilove never stated that institutional investors were purchasing these bonds or that Mr. Hillas had purchased them. Respondents further asserted that after disclosure of this information, Claimants purchased these bonds on three different occasions and also purchased 500 shares of common stock. Respondents further maintained that Claimants knew these bonds were not AAA rated and there was a degree of risk associated with a bond that was paying a higher yield. Respondents further contended that the investment the Claimants purchased were suitable for them, that it was represented to them properly and the fact that it did not perform to their satisfaction was due to market conditions and not due to any action or inaction on behalf of Respondents.

RELIEF REQUESTED

Claimants Harold and Eleanor Friedman requested \$9,891.79 in actual damages.

Respondents Prudential Securities, Inc. and Elaina S. Spilove requested the claim be dismissed in its entirety and costs be awarded in their favor.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph R. Lally, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 31, 1993, and not signed by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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. The claim of Claimants Harold and Eleanor Friedman against Respondents Prudential Securities, Inc. and Elaina S. Spilove is dismissed.
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 Claimants Harold and Eleanor Friedman shall be retained by the NASD, Inc.

AFFIRMATION

I, JOSEPH R. LALLY, 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.



Joseph R. Lally, Esq.

DATE OF DECISION:

September 20, 1993