

## N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration  
Between

Case Number 93-01493

David A. Wood,

Claimant,

v.

Prudential Securities, Inc.  
and Howard T. Gierling,

Respondents.

REPRESENTATION:

Stanley Yorsz, Esquire and Buchanan Ingersoll, P.C., for Claimant

Larry K. Elliott, Esquire and Cohen & Grigsby, for Respondents,  
Prudential Securities, Inc. and Howard T. GierlingCASE INFORMATION:

Statement of Claim filed on April 5, 1993.

Claimant's Submission Agreement signed on April 2, 1993.

Respondents' Answer filed on June 7, 1993.

Respondents' Submission Agreement signed on June 16, 1993.

Initial Claim: \$190,000.00

HEARING INFORMATION:

Hearing Date: Hearings at which witnesses were heard:  
November 3 and November 8, 1993, two complete days.

Meeting of Arbitrators to review testimony and make an award:  
November 8, 1993.

Hearing Location: Westin William Penn Hotel, Pittsburgh, PA.

PRELIMINARY MATTERS:

The Motion for Non-Suit on the unsuitability claims on behalf of Prudential Securities, Inc. and Howard T. Gierling was denied.

CASE SUMMARY

Claimant, a resident of Cochran, Pennsylvania, a small rural community near Oil City, was owner-operator of a retail grocery store from 1974 until late 1990, when he sold the store at the age of 37 for \$468,000. During these 16 years, claimant had made successful real estate investments but other than purchasing CDs from his bank, had never invested in securities.

In January of 1991, Claimant went to the Oil City office of Prudential for investment advice. There he was introduced to Howard Gierling, a broker who had the title of financial advisor, although he had been licensed for less than six months and, except for the Prudential training program, had very little experience. Supervision of Gierling by Prudential was inadequate.

Claimant informed Gierling that he had no experience in investing, needed investment advice, that he wanted security, was conservative by nature and wanted to preserve his capital. A new account form was completed which listed safety of principal and income under client profile, but Claimant said he was not in need of high income.

Claimant deposited with Prudential \$300,000 on January 9, 1991 and in July 1991, an additional \$203,000. Beginning in January of 1991 and continuing until early summer of 1992, Claimant alleged that Gierling recommended securities for him to purchase and on several occasions that securities should be sold. He always followed Gierling's recommendations.

Claimant testified that Gierling recommended the purchase of American Southwest Mortgage Investments (ASR) listed on the American Stock Exchange and on January 9, 1991, he purchased 3,200 shares at 8 7/8 for \$28,882.35. On November 11, 1991, another 4,200 shares at 8 7/8 for \$47,452.35, and at the recommendation of Gierling, Claimant purchased an additional 8,400 shares on December 10, 1991 for \$75,552.35. Claimant's total investment in ASR was thus \$150,887.05 or about 24% of his investment portfolio.

ASR is a real estate investment trust that invests in collateralized mortgage obligation residuals. Its earnings and stock price respond in a volatile manner to shifts in interest rate levels and the shape of the yield curve. ASR is a high

risk security, 95% leveraged and suitable for investors who understand the relationship between interest rate movements and the yield curve. Prudential managed its public offering and has performed investment banking services for ASR.

Claimant testified that Gierling did not inform him about any of the foregoing, nor was he told that when he made the November 7, 1991 purchase, Prudential's rating of ASR had gone from a "buy" to a "hold." He testified that he was informed ASR was undervalued, a good buy and was urged by Gierling to buy ASR. In January of 1992, ASR began to drop in value. Claimant testified Gierling advised him not to sell, that ASR would come back and he should ride it out. In June of 1992, Prudential lowered its rating on ASR to "sell." Claimant said he was not shown the change nor ever told to sell the security. When the stock dropped to \$3.00 a share, he said Gierling told him to double up. At that point he transferred his portfolios from Prudential.

Gierling testified that Claimant wanted a high income, that he only gave Claimant a menu of investments from which Claimant made his own selections. Gierling stated that he never recommended the purchase or sale of any security to Claimant.

The arbitrators have found that the Claimant was an unsophisticated investor, that ASR was not a suitable investment for Claimant, the amount sold was highly excessive, that Respondents knew that the securities were unsuited, the Respondents recommended the purchase, that Respondents withheld information from the Claimant relating to suitability and that the Claimant relied upon the recommendations of Respondents to his detriment. The arbitrators also found that Prudential failed to properly supervise Gierling.

#### RELIEF REQUESTED

Claimant, David A. Wood, requested the sum of \$136,000 in damages. Respondents requested that all claims be dismissed.

#### AWARD

After considering the pleadings, the testimony of witnesses at the evidentiary hearings and the briefs of counsel for Respondents, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent, Howard T. Gierling, is liable to and shall pay the Claimant, David A. Wood, the sum of \$44,334.32 in damages.

2. The Respondent, Prudential Securities, Inc., is liable to and shall pay the Claimant, David A. Wood, the sum of \$44,334.33 in damages.

3. Each party shall bear their own costs.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750 = \$3,000, less  
hearing deposit of \$750 = \$2,250 net due.

Prudential Securities is liable and shall pay to the NASD \$2,250 to represent forum fees.

#### ARBITRATION PANEL

Name and Signature

Status

Date Signed

  
Andrew L. Weil, Esq.

Public Arbitrator &  
Chairperson

  
Timothy D. Wasson

Industry Arbitrator  
Panelist

  
Robert R. Thomas

Public Arbitrator  
Panelist

Date of Decision: November 30, 1993