

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gerald Arich

93-01512

Name of Respondents

Prudential Securities, Inc.
Vincent Charles Andriole

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 15, 1993, Claimant Charles Arich, who appeared Pro Se, alleged that in August 1983, he contacted Respondent Prudential Securities, Inc. requesting information about Zero Coupon Bonds or an alternative safe investment for \$10,000.00 that he saved for his son's education, at which time, Respondent Vincent Charles Andriole, his assigned broker, strongly suggested that Claimant reconsider his choice to a position in Glaxo Holdings common stock by claiming that upon FDA approval would triple in price whereby Respondent Vincent Charles Andriole said he had purchased quite a few shares himself. Claimant further alleged that he advised Respondent Vincent Charles Andriole that he was not a sophisticated investor and would not consider Glaxo, but wanted something that he could count on, at which time, Respondent Vincent Charles Andriole's second recommendation was the Prudential-Bache Limited Partnership Acquisition Fund #1 that could be purchased in \$5,000.00 units, each paying 9% annual interest until maturity in seven years. Claimant contended that he met with Respondent Vincent Charles Andriole in Respondent Prudential Securities, Inc.'s New Haven office, at which time, he reaffirmed his recommendation of this Limited Partnership Acquisition Fund and added quotes such as; "that based on current Real Estate prices there is no reason this upward trend will not continue"; "why invest in Zero's when you can get 9% interest and triple your son's investment in only seven years instead of ten years?", and "this is the best investment I have seen in years which would guarantee return payment for your son's education and give you something extra for yourself." Claimant further contended that after considering Respondent Vincent Charles

Andriole's statements and the integrity and reputation of Respondent Prudential Securities, Inc., Claimant decided on September 6, 1983 to purchase one unit in the amount of \$5,000.00 whereby this unit value was projected to mature into roughly \$15,000.00 plus interest in seven years, at which time, these facts Claimant reviewed with Respondent Vincent Charles Andriole, who then assured him, he would not regret this decision. Claimant asserted that in January 1984, he received an initial interest check for \$1.19 plus a 1099 Form for 1983, at which time, Claimant wrote to Mr. Reynolds, Assistant V.P. and Manager of the Fund on January 27, 1984, which letter was never answered. Claimant asserted that sometime in March 1984, Respondent Vincent Charles Andriole called to advise him to communicate only with him on matters regarding the Fund and his answers, regarding the projections of the Fund, were evasive. Claimant further asserted that between 1984 and 1989, his questions about the Fund were discussed with Respondent Vincent Charles Andriole and during two of these conversations, Claimant was reprimanded three times for trying to obtain more detailed answers from Mr. Reynolds. Claimant further alleged that in December, 1992, he wanted to sell the Fund whereby Respondent Vincent Charles Andriole stated, "You really don't want to sell, do you?", "There is no market for this Fund and you don't want to know the selling price", at which time his closing remark was, "Well, it was a good situation at the time, but it was not a prudent recommendation after all". Claimant further contended that Respondents Vincent Charles Andriole and Prudential Securities, Inc.'s inappropriate handling of his money, caused him to sustain loss.

Respondents Prudential Securities, Inc. and Vincent Charles Andriole, by and through their in-house counsel, Joel Levinson, maintained that Claimant Gerald Arich, by his own admission in the Statement of Claim, purchased \$5,000.00 worth of Prudential-Bache Acquisition Fund on September 6, 1983 thus there is no question that Claimant bought the Fund nearly ten years ago. Respondents further maintained that Section 15 of the NASD Code of Arbitration Procedure (the "Code"), entitled "Time Limitation on Submission", states, in part, that "no dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy", therefore since Claimant purchased the Fund well over seven years ago, his claim is not even eligible for submission to an arbitration before the NASD; however, the basis of Claimant's claim is that the Acquisition Fund was misrepresented to him, whereby nothing could be further from the truth in that Claimant received more than enough information with which to make an intelligent decision and Claimant was totally aware of the type of investment he was making. Respondents contended that in the subscription Agreement, Claimant acknowledged receipt of the Prospectus and accordingly had every opportunity to read it, whereby the prospectus, in clear and concise language, accurately discussed the Acquisition Fund, including the risks and investment objectives with no assurance that such objectives will be attained. Respondents further contended that Claimant was suitable for this investment and Claimant represented that he met the suitability requirements as set forth in the prospectus. Respondents asserted that they do not deny that the investment has not performed as well as everyone would like; however, the nationwide crash in real estate market is well documented, and has affected

the partnership, as it has affected nearly all investments in real estate, nonetheless, Claimant was made fully aware of the risks of this investment. Respondents asserted that Claimant's claim is barred by the applicable statutes of limitations and has failed to state a claim upon which relief can be granted. thus, the claim should be dismissed.

Claimant Gerald Arich replied to Respondents' Statement of Answer and asserted that his Statement of Claim should not be dismissed because the time-barred date is wrong, in that his claim of dispute is as of December, 1992 when Respondent Vincent Charles Andriole responded to Claimant's question about the value of the final disposal of the Properties of the Acquisition Fund 1. Claimant further asserted that Respondents presented him with untrue statements of a material fact which he discovered in December, 1992, thus the claim is not time-barred.

RELIEF REQUESTED

Claimant Gerald Arich requested the sum of \$5,000.00 in actual damages together with interest at the rate of 9% per annum.

Respondents Prudential Securities, Inc. and Vincent Charles Andriole requested the claim be dismissed in its entirety and judgement be rendered in favor of Respondents.

AWARD

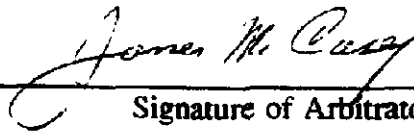
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James M. Casey, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 7, 1993, by the Respondent Prudential Securities, Inc. on June 7, 1993 and by the Respondent Vincent Charles Andriole on June 2, 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. The claim of Claimant Gerald Arich against Respondents Prudential Securities, Inc. and Vincent Charles Andriole 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 Claimant Gerald Arich shall be retained by the NASD, Inc.

AFFIRMATION

I, JAMES M. CASEY, 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.



Signature of Arbitrator

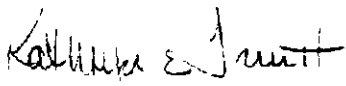
DATE OF DECISION: December 14, 1993

STATE OF: NEW YORK

SS:

COUNTY OF: DUTCHESS

On this 4 day of DECEMBER 1993, before me personally appeared James M. Casey 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.



Kathleen E. Trutt

Notary Public, State of New York
Exp. No. 3186997
Quaintan, Dutchess County
Commission Expires May 15, 94