

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Alexander J. Belmont
Wanda A. Belmont

NASD Arbitration
No. 93-02086

Name of Respondent(s)

Prudential Securities, Inc.

REPRESENTATION

For Claimants: Steven M. Green, Esq. and Nancy Wilson, Esq., San Diego, California

For Respondent: Robert B. Ericson, Esq. and Richard W. Smirl, Esq., Keesal, Young & Logan, Long Beach, California

CASE INFORMATION

Statement of Claim filed: May 21, 1993
Amendment and Supplement to Statement of Claim filed: February 23, 1994
Claimants' Submission Agreement signed: May 21, 1993

Statement of Answer filed by Respondent: August 12, 1993
Letter by Richard W. Smirl, on behalf of Respondent, dated March 7, 1994 relative to Amendment and Supplement to Statement of Claim filed: March 7, 1994
Respondent's Response to Amendment and Supplement to Statement of Claim filed: March 21, 1994
Respondent's Supplemental Response to Amendment and Supplement to Statement of Claim filed: April 8, 1994

Respondent did not file a Submission Agreement but appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):
March 14, 1993 (one session)

April 8, 1994 (one session)
April 11, 1994 (one session)

Hearing Date(s)/Session(s): April 13, 1994 (two sessions)
April 14, 1994 (two sessions)
April 15, 1994 (two sessions)
April 16, 1994 (one session)

Hearing Location: San Diego, California

CASE SUMMARY

Claimants alleged that Respondent's representations, actions and omissions in connection with recommending and selling the Prudential-Bache Energy Income P-18 and P-22 units (P-18 and P-22 units) to Claimants for \$25,000.00 constituted the following causes of action: 1) breach of fiduciary duty; 2) intentional misrepresentation, fraud and deceit; 3) breach of contract and covenant of good faith and fair dealing; 4) violation of the Securities Act of 1933, 15 U.S.C. Sections 771(1), 771(2), 77g(a)(1), 77g(a)(2) and 77g(a)(3); 5) violation of Sections 25400, 25401, 25500 and 25501 of the California Corporate Securities Act of 1968; 6) violation of Sections 25110, 25130 and 25503 of the California Corporate Securities Act of 1968; 7) negligence, negligent misrepresentation and negligent management; and 8) conversion. In an Amendment and Supplement to their Statement of Claim, Claimants alleged that Respondent also violated the California Elderly Abuse Act of the California Welfare and Institutions Code.

Specifically, Claimants alleged that Respondent misrepresented to them various material facts with respect to the safety of, liquidity of, marketability of, and income to be derived from the P-18 and P-22 units, which misrepresentations were reasonably and justifiably relied on by Claimants and misled Claimants into purchasing such securities. Claimants further alleged that the P-18 and P-22 units of limited partnerships were unsuitable investments for Claimants in light of their financial needs, net worth, income, stated investment objectives, age, and retired status.

Respondent alleged that Claimants were experienced and sophisticated investors, that the P-18 and P-22 units were suitable investments for Claimants based on Claimants' net worth, income, investment experience, education, sophistication, investment objectives and desire for enhanced cash flow. Respondent also alleged that the risks of the investments were properly disclosed to Claimants in the prospectus, and that no written or oral misrepresentations were made to Claimants by Respondent or its representatives with respect to the safety or liquidity or any other material feature of the investments. Respondent denied that any of its actions or omissions breached the rights of Claimants or

constituted the violations or breaches alleged by Claimants. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Under all counts, that the arbitration panel grant judgment against Respondent and award damages to Claimants in the aggregate amount of in excess of \$25,000.00 or such other aggregate amount determined to have been sustained by Claimants, together with interest and costs of suit;

2. Under the fourth, fifth and sixth causes of action, an order from the arbitration panel determining that the contracts for the sale of securities are rescinded and that the consideration paid by Claimants to Respondents in excess of \$25,000.00, or such sum as is found at hearing to have been paid to Respondents, be returned to Claimants, with interest thereon at the legal rate from the date the contracts were entered into by Claimants, or in the alternative, damages in the amount of in excess of \$25,000.00, or such other sum as is found at hearing to have been sustained by Claimants;

3. Under the first, second, eighth, and ninth causes of action, that the arbitration panel grant judgment and assess punitive and exemplary damages against Respondent in an aggregate amount to be determined at hearing;

4. Under the ninth cause of action, that the arbitration panel grant attorney's fees and costs and damages as allowed by law;

5. That the arbitration panel grant Claimants their costs and disbursements together with reasonable attorney's fees; and

6. That the arbitration panel order such other and further relief as may be necessary and appropriate.

Respondent requested:

1. Dismissal of all claims against Respondent;

2. Costs including all forum fees and attorneys' fees;

and

3. Such other and further relief as the arbitration panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Without objection, a shorthand reporter retained by Respondent was permitted to be present throughout the hearing and to transcribe the proceedings. The tape recording was declared to be the official record.

Respondent's motions to dismiss were denied.

Claimant's motions for sanctions against Respondent for failure

to make timely production of requested documents and information, in violation of an order made by an arbitrator during a pre-hearing telephonic conference and otherwise, were denied.

Evidence introduced at the hearing did not support the claim that the P-18 and P-22 units were unsuitable investments for the Claimants in light of their financial circumstances or investment experience, and, during Claimants' oral argument at the conclusion of the hearing, Claimants withdrew that claim. Such claim is dismissed with prejudice.

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

FINDINGS

The arbitrators find that Claimants have satisfied the burden of establishing to the panel's satisfaction that misrepresentations of material facts were made to Claimants by Respondent's representatives at the direction of Respondent. These misrepresentations misled Claimants into investing in the P-18 and P-22 units. The misrepresentations were made to Claimants at the two Prudential seminars that Mr. Belmont attended prior to purchasing the P-18 unit and by Respondent's account executive James M. Barrett in one-on-one conversations prior to such purchase. These misrepresentations were oral. Some were made in connection with slide presentations and lecture materials. Claimants reasonably and justifiably relied upon Respondent's oral misrepresentations. In the circumstances of this case, Claimants are not charged with notice of the contents of the lengthy prospectuses.

Where Respondent, acting in California as Claimants' stockbroker, recommended and sold to Claimants interests in limited partnerships which were organized and managed by Respondent and its affiliates, Respondent owed a duty to Claimants to act in Claimants' best interests. Where Respondent provided to Claimants oral descriptions of the investments in addition to the prospectuses, such descriptions needed to include specific disclosure of material risks relating to the information provided, and reference, if any, to the prospectus for a disclosure of the risks did not satisfy Respondent's duty to Claimants.

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. Respondent Prudential Securities, Inc. is liable for and shall pay to Claimants the sum of \$15,000.00 as compensatory damages. Such sum shall not bear interest prior to the date of this award.
2. Claimants' requests for punitive and exemplary damages are denied.
3. All other claims and defenses of the parties are dismissed.
4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$400.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against: Respondent Prudential Securities, Inc. in the amount of \$3,700.00, calculated as follows: Three pre-hearing sessions times \$300.00/session plus seven hearing sessions times \$400.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Franklin G. Allen, Esq.	Public Arbitrator
Ronald O. Bub	Public Arbitrator
Leo B. Rotter	Industry Arbitrator

Concurring Arbitrators' Signatures



Franklin G. Allen, Esq.

Ronald O. Bub

Leo B. Rotter
Served 5/19/94

Date of Decision: _____

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Public Arbitrator

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Industry Arbitrator

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Served 5/19/94

Date of Decision: 16 APRIL 1994

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