

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Daniel M. St. James and Janet St. James

93-02111

Name of Respondent

Prudential Securities Incorporated

REPRESENTATION

For Claimant: Daniel M. St. James and Janet M. St. James ("St. James") were represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, P.C., located in St. Clair Shores, Michigan.

For Respondent: Prudential Securities Incorporated ("Prudential") was represented by Jack J. Mazzara, Esq. of Butzel Long, located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: May 26, 1993.

Claimant's Submission Agreement signed on: March 5, 1993.

Statement of Answer filed on: July 21, 1993.

Respondents, Submission Agreement signed on: July 12, 1993 by Gail S. Johnson, Vice President, Prudential Securities, Incorporated.

HEARING INFORMATION

Pre-Hearing Conference:

None held.

Hearing Dates/Sessions:

October 2, 1995 for Two (2) sessions;
October 3, 1995 for One (1) session.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

The St. James alleged that Respondent Prudential misrepresented and induced their purchase of direct investments and limited partnerships which were unsuitable given the Claimants' investment objectives and financial experience. The claim specifically alleged that:

1. Claimants opened their Prudential account in 1986. They never had a brokerage account prior to opening this account and were totally naive when it came to investments. They explained to their broker that their primary investment objectives were preservation of capital and income;
2. The St. James originally invested in Putnam's Option Income Fund. In September 1987, the broker advised that Prudential had created or participated in limited partnerships and "direct investments". The broker advised that based upon information supplied to him by Prudential, these were ideal investment objectives to accomplish the Claimants' investment objectives. When the St. James balked because they had no more money to invest, the broker suggested they use margin to accomplish the purchase. They purchased \$10,000.00 of Polaris Aircraft Income Fund 3;
3. In October 1987, the market crashed, the St. James received their first margin call, and a new broker was assigned to the St. James' account. In January 1988, the new broker prepared an investment strategy for the St. James, listing limited partnerships under safety growth;
4. In April 1989, after numerous margin calls, the broker suggested the St. James sell the Putnam fund and eliminate their margin debt. He advised the St. James to invest the proceeds from Putnam in a limited partnership and "direct investment". The St. James purchased \$10,000 of Prudential-Bache Energy Income Fund P-25;
5. In complete disregard for the Claimants' objectives. Prudential recommended investments they knew or should have known were unsuitable, which were misrepresented as safe, conservative and liquid, were sold with materially misleading sales devices, and were sold only through Prudential; and
6. Prudential engaged in a nation-wide fraud designed to cause its brokers to recommend and customers to purchase direct investments marketed by Prudential.

Based upon the above allegations, the St. James asserted claims for breach of fiduciary duty; violations of securities laws and contract; common law fraud and conversion; intentional infliction of emotional distress; negligence, gross negligence and negligent supervision; and failure to use due diligence.

Prudential denied the material allegations of the Statement of Claim, alleging that:

1. The St. James stated investment objectives were long-term growth, tax-sheltered income, safety of principal and income. The Claimants overall investment portfolios at Prudential was consistent with these objectives. In addition, Claimants received prospectuses for each investment which contained detailed disclosures about the nature of the investments and the risks associated with them;
2. At the time of purchase, each investment was viewed as a good investment. Polaris had a very successful track record and had maintained an active secondary market. The Prudential Bache Energy Income Fund P-25 was a program which purchased interests in producing oil and gas wells, and was not an exploratory program;
3. The purchase of the Energy fund occurred because the Claimants were very pleased with the performance of Polaris, they were responsive to other limited partnerships, and they were dissatisfied with the increased margin calls on the Putnam Fund;
4. The investments were not unsuitable, but were a good investment given the Claimants net worth and investment objectives; and
5. The yields have been affected by market factors outside Prudential's control. These programs should not be judged on what has happened since the purchases, but rather on the information Prudential knew at the time the investments were made, and the economic and investment climate at the time.

In addition, Prudential asserted several affirmative defenses, including the following:

1. The Claimants have received distributions and investments performance were affected by factors not within Prudential's control;
2. The claims are barred by the applicable statute of limitations;
3. The claimants' losses are the proximate cause of their own negligence; and

4. The Claimants failed to act reasonably to mitigate their damages.

RELIEF REQUESTED

Claimants requested entry of an award against Respondent for actual damages in excess of \$26,314.55; punitive damages; exemplary damages; attorneys' fees and costs of representation; and pre- and post-award interest.

Respondent requested that the arbitrators award the Claimants nothing and dismiss the proceeding.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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.

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 Incorporated is liable for and shall pay to the Claimants, Daniel M. St. James and Janet St. James the sum of \$18,000.00 as actual damages;
2. All costs of arbitration, including attorneys' fees shall be borne by the party incurring the cost, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$400.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$100.00 non-refundable claim

filing fee and the \$400.00 hearing session deposit previously deposited by the Claimants, Daniel M. St. James and Janet M. St. James. Claimants Daniel M. St. James and Janet M. St. James are liable for and shall pay to the NASD the sum of \$200.00 as additional forum fees. Respondent Prudential Securities Incorporated is liable for and shall pay to the NASD the sum of \$600.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.
Barry Goldman, Esq.
Public Arbitrator
Chairperson

December 20, 1995

/s/ Donald A. Edwards, Esq.
Donald A. Edwards, Esq.
Public Arbitrator

December 21, 1995

/s/ Frank G. Bank
Frank G. Bank
Industry Arbitrator

December 20, 1995

For NASD Use Only

Date of Decision: December 22, 1995