

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles S. Pope and Elizabeth M. Pope

93-02434

Name of Respondent

Prudential Securities Inc

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 22, 1993, Claimants Charles S. and Elizabeth M. Pope who appeared ProSe, alleged that on September 1, 1987, they purchased from Respondent Prudential Securities, Inc. Southbury, Connecticut office, \$10,000 face value circle Express Sr. - Subordinate Debentures - FA 13.50 - 8/1/97 dtd, 7/15/87, call 8/1/90 at \$106.75, First CPN 2/1/88 - ytd to maturity 13.40 for a total cost of \$10,052.50. Claimants further alleged that Circle Express paid the first three dividends according to schedule, however, the fourth dividend was credited to their account on August 1, 1989, but rescinded and debited \$675.00 a week later whereby Claimants have concluded that Circle Express filed Chapter 11 Bankruptcy on or about this date. Claimants contended that in February, 1991, Circle Express resurfaced renamed, Intrenet and issued 1039 shares common stock at 9 5/8, an Over the Counter ("OTC") listing, at which time, less that two months later, Intrenet declined 1 1/4 - 1 5/8. Claimants further contended that on September 20, 1991 they sold their 1039 shares at 1 1/2 for the total proceeds of \$1,455.16. Claimants asserted that hindsight seems to indicate that their purchase on September 1, 1987, less than two months after the new issue of July 15, 1987, was part of the original issue and Respondent was having difficulty moving it, at which time, Claimants are tempted to ask, "was this one of the reasons [they] did not receive a prospectus?" Claimants further asserted that Respondent's lack of due diligence before selling these bonds and misrepresentation, caused Claimants to incur losses, thus Respondent should be liable.

Respondent, Prudential Securities Inc. by and through their in-house counsel Renee Kwait Rettig, Esq. maintained that in their Statement of Claim Claimants Charles S. and Elizabeth M. Pope outline the history of 10,000 Circle Express Senior Subordinated Debentures which they purchased in their account on September 1, 1987 whereby these bonds had a coupon rate of 13 1/2 %, matured in 10 years, and were purchased at a slight premium (100.50) for a total cost of \$10,052.50. Respondent further maintained that the first three interest payments were paid on schedule for a total of \$2,028.75, but the fourth, on August 1, 1989, was rescinded because the company was having financial difficulties and later filed for bankruptcy under Chapter 11. Respondent contended that in February, 1991, the company, renamed Intrenet, Inc., issued 1,039 shares of common stock at 9 5/8 to the Claimants in exchange for their 10,000 bonds whereby these shares were traded over the counter. Respondent further contended that on September 27, 1991, Claimants sold their 1,039 shares at 1 1/2 for a total sale price of \$1,456.16. Respondents contend that Claimants had ample opportunity to mitigate their losses regarding their Circle Express bonds but failed and/or refused to do so. Respondent asserted that in July 1988 Circle Express publically announced that it was the subject of a Securities and Exchange Commission investigation and had initiated an internal investigation into possible insider trading and errors or misstatements in financial reports, at which time, the bonds were trading at 84, whereby Claimants could have sold their bonds at this point for, \$8,400.00, thus mitigating their loss to \$1,652.50. Respondent further asserted that Claimants investment history shows that they were suitable candidates for this bond issue whereby the Claimants were interested in high yield bonds as evidenced in their ownership of numerous high yield bonds over a period of time and as sophisticated investors they were aware of the risky nature of high yield bonds since two of their bonds were already in default. Respondent further maintained that Claimants made the decision to take the risk and buy these bonds, and Claimants also made the decision to hold the bonds in hopes the company would weather its financial difficulties at which time Claimants could have mitigated their damages, but they chose not to, thus Respondent cannot be held responsible for an investor's voluntary decision to undertake market risk.

RELIEF REQUESTED

Claimants Charles S. and Elizabeth M. Pope requested the sum of \$8,596.34 in actual damages.

Respondent Prudential Securities, Inc. requested the Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edward T. Hill, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 17, 1993 and by the Respondent on September 21, 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. Claimants Charles S. and Elizabeth M. Pope's Motion to compel is hereby denied.
2. The claim of Claimants Charles S. and Elizabeth M. Pope against Respondent Prudential Securities, Inc. is dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Charles S. and Elizabeth M. Pope shall be retained by the NASD.

AFFIRMATION

I, **EDWARD T. HILL**, 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.

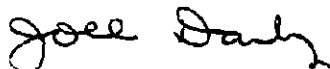


Signature of Arbitrator

DATE OF DECISION: January 3, 1994

STATE OF NEW YORK
COUNTY OF Westchester s.s:

On the 21 day of December, 1993, before me personally appeared Edward T. Hill who executed the foregoing instrument and duly acknowledged to me that he executed the same.



DARRY JOEL
Notary Public, State of New York
No. 5816876
Qualified in Nassau County
Commission Expires Dec 31, 1994