

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Thomas and Concetta Marasa

93-02532

Name of Respondents

Prudential Securities Inc
Lawrence Durso

REPRESENTATION

For Claimants Thomas and Concetta Marasa ("Claimants") appeared Jill Marasa.

For Respondents Prudential Securities, Inc. ("Prudential") and Lawrence Durso ("Durso") appeared Dominick Evangelista, Esq. of the law firm Bressler, Amery & Ross, Morristown, NJ.

CASE INFORMATION

The Statement of Claim was filed June 10, 1993 and Claimants' Submission Agreement was signed on June 21, 1993.

The Joint Statement of Answer of Respondents Prudential and Durso was filed on August 2, 1993. Respondents Prudential Securities, Inc. and Lawrence Durso did not file Submission Agreements.

Claimants filed an updated list of claims on April 19, 1994.

Respondents filed their response to the updated list of claims on April 20, 1994.

HEARING INFORMATION

Hearing Dates/ Sessions:	May 13, 1994	-	One Session
	October 24, 1994	-	Two Sessions
	December 12, 1994	-	Two Sessions

The hearings were held at the NASD offices located in New York City, NY.

CASE SUMMARY

Claimants alleged that Thomas Marasa was a construction laborer until July 27, 1981 when Thomas Marasa was injured and permanently disabled with loss of hearing and seizures. In compensation for these injuries, Thomas Marasa received a lump sum settlement which allegedly constituted his life's savings and only source of future income.

Claimants alleged that their son referred them to Respondents Prudential Securities, Inc. ("Prudential") and Lawrence Durso ("Durso"), an account executive at Prudential, to invest their settlement funds. Claimants also alleged that Respondent Durso was informed that Claimants had not participated in the securities markets and were uneducated regarding investments. It was then alleged by claimants that the account was initially opened on August 22, 1985; the initial deposit used to establish the account was the sum of \$420,713.00; and that their investment objectives were preservation of capital and generation of income.

Claimants alleged that on July 7, 1987, Respondent Durso sold 1,000 shares of PruBache Equity fund sustaining a loss in the account of \$4,740.00 and 2,649 shares of Pru Bache Government Fund sustaining a loss of \$1,721.85. The proceeds were allegedly used to purchase 100 units of Pru Bache Energy Partnership 18 LP and cover a \$10,000.00 check drawn against the account. Claimants further contend that these sales and purchases were inappropriate and unsuitable.

Further, on September 16, 1987 and September 18, 1987, 3,600 shares of Pru Bache Equity Fund were sold from the account at a loss of \$16,864.06; 10,000 shares of Pru Bache Muni Ser Fund NY were sold at a loss of \$8,505.00; and 6,000 shares of Pru Bache Government Funds were sold at a loss of \$6,906.60. In addition, the following purchases took place:

- purchase of \$25,000 CD Columbia S & L 9.40%;
- purchase of \$50,000 CD Imperial S & L 8.75%;
- purchase of \$50,000 CD Far West S & L 9.00%;
- purchase of \$30,000 CD Far West S & L 9.10%;
- purchase of 200 shares of Anheuser Busch at \$36.00 per share;
- purchase of 100 shares of Chrysler Corp. at \$42.00 per share;
- purchase of 200 shares of USX Corp. at 34 7/8 per share; and a
- purchase of 200 shares UpJohn Co. at \$49.375 per share.

Claimants maintained that these purchases and sales were inappropriate and unsuitable.

Respondents denied all allegations of wrongdoing asserted in the Statement of Claim. Respondents maintained that Durso met claimants in August 1985 at

which time Claimants advised Respondent Durso that Thomas Marasa had received a lump sum distribution as a result of an unfortunate accident; that during the meeting, Durso prepared a cash flow analysis; and that Respondent Durso determined that Claimants would need to generate approximately \$32,064.00 per year.

Further, Respondents maintained that Durso provided Claimants with his recommendations which provided for \$300,000.00 to be placed in two mutual funds. Also, Respondent maintained that Durso recommended the Prudential Equity Fund and the Prudential Acquisition Fund which were explained to Claimants prior to their investment in these securities and that Claimants were satisfied that this portfolio would meet their financial needs and authorized Durso to purchase these investments.

It was further maintained by the Respondents that Claimants began to deplete the portfolio by taking huge sums of cash from the account. Durso allegedly reminded the Claimants that the account could not achieve its original goals should these huge withdrawals be continually made when the account was designed to provide Claimants with income of approximately \$32,000.00 a year.

As their affirmative defenses, Respondents maintained that Claimants authorized, accepted and/or ratified the transaction of which they complain; any losses are attributable to market conditions and to their own investment decisions; the claim is barred by the Doctrines of Laches, waiver, estoppel and ratification; Claimants failed to state a claim upon which relief can be granted; and Claimants assumed the risks associated with the investments of which they complain.

Respondents moved to dismiss any claims regarding the purchase of Prudential-Bache Acquisition Fund maintaining that the purchase was made approximately eight years prior to the filing of the Statement of Claim and was, therefore, ineligible pursuant to Section 15 of the NASD Code of Arbitration Procedure ("the Code"). Respondents also maintained that any claim regarding the Claimants' purchase of Prudential-Bache Energy Income Fund P-18 should also be dismissed from this arbitration pursuant to Section 12 (d) of the Code of Arbitration Procedure, which states that any claim filed by a member or members of a putative or certified class action is ineligible for arbitration. Respondents contend that Claimants did not effectively opt out of the Prudential-Bache Energy Income class action which was filed in the District Court of Louisiana and are participating members of the class action.

Claimants requested that the Motions to Dismiss be denied. Claimants maintained that Prudential entered into a settlement with the Securities and Exchange Commission and established a fund to assure quick and fair resolution of investor claims. Therefore, claimants maintained, Prudential agreed to waive any statute of limitations defenses it could have raised against investor claims and, as a result, the motion to dismiss should be denied. Further, Claimants maintained

that they opted out of the Prudential-Bache Energy Income class action and, therefore, that motion should also be denied.

RELIEF REQUESTED

Claimants requested an award as follows:

- (1) \$38,737.51 - Losses resulting from the sale of Mutual Funds;
- (2) \$26,260.01 - Commissions, Front-end Load Charges, Back-end Load Charges detailed as follows:
 - a) \$7,500.00 - 5 % Front end load Pru Government Plus Fund
 - b) \$7,500.00 - 5 % Front end load Pru Muni NY Fund
 - c) \$2,500.00 - 5 % Front end load Pru Equity Fund
 - d) \$1,059.60 - 4 % Back end load Pru Government Plus Fund
 - e) \$3,150.00 - 3 % Back end Load Pru Muni NY Fund
 - f) \$ 736.06 - Back end load Pru Equity Fund
 - g) \$1,686.60 - 3 % Back end load Pru Government Plus Fund
 - h) Commissions on Stock Purchases:

\$ 99.40	Chrysler
\$163.40	Anheuser Busch
\$160.14	USX Steel
\$199.81	UpJohn
 - i) Commissions on CD Purchases:
(Based on 1 point commission)

\$250.00	\$25,000.00 Columbia S&L
\$500.00	\$50,000.00 Imperial S&L
\$500.00	\$50,000.00 FarWest S&L
\$500.00	\$30,000.00 FarWest S&L
- 3) \$25,000.00 - Pru Energy 18 Limited Partnership; Full face value (including commissions) plus buy back of investment.

- 4) \$50,000.00 - Pru Realty Acquisition 2 Limited Partnership; Full face value (including commissions) plus buy back of investment.
- 5) \$70,694.21 - Investments held in the Prudential Securities account, repurchased by Prudential Securities at the claimants initial purchase cost (including commissions), to terminate the account.
- 6) \$4,115.02 - Punitive Damages - All losses incurred, Front end load and Back end load charges based on average Prudential Money Market Rate of 6.55% from 1985 to 1992.

Claimants filed an updated listing of claims which request the following:

- 1) \$ 8,505.00 Pru Bache Muni Fund Loss - September 1987
- 2) \$ 1,721.85 Pru Bache Gov't Fund Loss - July 1987
- 3) \$ 6,906.00 Pru Bache Gov't Fund Loss - September 1987
- 4) \$50,000.00 Pru Bache Real Estate LP - Principal
- 5) \$17,418.00 Pru Bache Energy 18 LP - Principal
- 6) \$ 4,800.00 UpJohn Principal
- 7) \$ 8,500.00 Pru Bache Gov't Fund Principal for 5,500 shares
- 8) \$13,243.00 Income Earned Differential

\$111,093.85

Respondents requested that the Claim and Updated Listing of Claims be dismissed in their entirety; the Claim and Updated Listing of Claims be dismissed pursuant to Section 12(d) of the Code on the ground that claimants were members of the Prudential-Bache Energy Income Partnerships Securities Litigation Class Action and that attorneys fees and costs be awarded in favor of the Respondents.

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.

This panel finds that Respondents Prudential Securities, Inc. and Lawrence Durso were required to sign Submission Agreements pursuant to Sections 12 and 25 of

the Code of Arbitration Procedure, as Durso was associated with an NASD member firm, namely Prudential Securities, Inc., at the time this controversy arose. Additionally, Durso executed a Form U-4 requiring him to arbitrate at this forum upon the demand of the customer claimants.

At the hearing, Claimants requested that the panel reconsider the decision of the Director of Arbitration granting Respondents' Motion to Dismiss claims regarding purchases made prior to June 25, 1987 as ineligible for submission to arbitration as they occurred more than six years prior to the date of submission.

The arbitration panel unanimously determined that under Section 15 of the Code the occurrence or event giving rise to the act or dispute, claim or controversy was deemed the date the claimants' account statements began to reflect the value of the investment as opposed to stating the value at the initial purchase price. The panel ruled that the claims regarding the Prudential-Bache Acquisition Fund were eligible for arbitration.

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. Claimants be and hereby are ordered to return to Prudential Securities, Inc. 50 units of Prudential Bache Realty Acquisition Fund II, L.P.;
2. Respondent Prudential Securities, Inc. be and hereby are liable to the Claimants and shall pay to the Claimants the sum of \$50,000.00;
3. Each party shall bear their respective costs, including attorney's fees.

FORUM FEES

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

5 sessions X \$750.00 = \$3,750.00 minus hearing session deposit of \$750.00 = net \$3000.00 due.

1. Claimants be and hereby are liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.

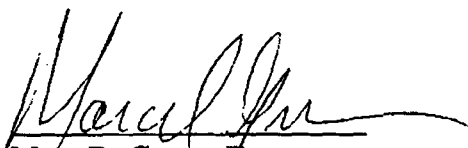
2. Respondent Prudential Securities, Inc. be and hereby are liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.
3. Respondent Lawrence Durso be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.

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

Concurring Arbitrators' Signatures
Name

Marilyn J. Salzman, Esq.
Public Arbitrator

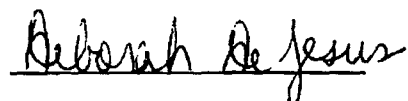
Rena E. Grossfield
Public Arbitrator



Marc R. Green, Esq.
Industry Arbitrator

STATE OF NEW YORK
COUNTY OF

On this 19 day of January, 1995, before me personally appeared Marc Green, known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



Deborah A. DeJesus

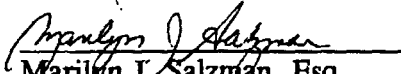
DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 96
Commission Expires January 24, 1996

Date of Decision: January 24, 1995

2. Respondent Prudential Securities, Inc. be and hereby are liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.
3. Respondent Lawrence Durso be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.

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

Concurring Arbitrators' Signatures
Name

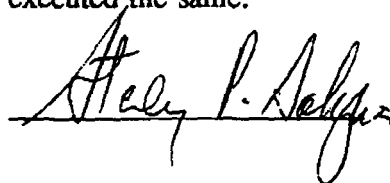

Marilyn I. Salzman, Esq.
Public Arbitrator

Rena E. Grossfield
Public Arbitrator

Marc R. Green, Esq.
Industry Arbitrator

STATE OF NEW YORK
COUNTY OF Nassau

On this 23rd day of January, 1995, before me personally appeared _____, known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



STANLEY P. SALZMAN
NOTARY PUBLIC, State of New York
No. 8746425
Qualified in Nassau County
Commission Expires August 31, 1996

Date of Decision: January 24, 1995

2. Respondent Prudential Securities, Inc. be and hereby are liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.
3. Respondent Lawrence Durso be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 which represents one-third of all outstanding forum fees assessed against the parties.

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

Concurring Arbitrators' Signatures
Name

Marilyn J. Salzman, Esq.
Public Arbitrator

Rena E. Grossfield
Rena E. Grossfield
Public Arbitrator

Marc R. Green, Esq.
Industry Arbitrator

STATE OF NEW YORK
COUNTY OF *New York*

On this 24th day of January, 1995, before me personally appeared Rena E. Grossfield, known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

ERIKA KLAR
Notary Public State of New York
No. 5000380
Qualified in New York County
Commission Expires August 17, 1996

Erika K. Klar

Date of Decision: January 24, 1995