

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carol Chapman

Name of Respondents

93-02862

Prudential Securities Incorporated

Name of Third-Party Respondent

Austin B. Chapman

REPRESENTATION

For Claimant: Carol Chapman ("Chapman") was represented by Charles J. Guyselman, Esq. of Lansing, Michigan.

For Respondent/Third-Party Claimant: Prudential Securities, Inc. ("Prudential") was represented by Dennis K. Egan, Esq. of Butzel Long, located at Detroit, Michigan.

For Third-Party Respondent: Austin B. Chapman was represented by Charles J. Guyselman, Esq. of Lansing, Michigan.

CASE INFORMATION

Statement of Claim filed: July 21, 1993.

Claimant's Submission Agreement signed on: May 23, 1993.

Statement of Answer filed by Respondent/Third-Party Claimant Prudential on: May 24, 1994.
Respondent/Third-Party Claimant Prudential did not file an executed Submission Agreement.
Respondent/Third-Party Claimant Prudential's Third-Party Claim filed on: May 24, 1994.

Third-Party Respondent, Austin B. Chapman's Answer to the Third-Party Claim filed on: November 1, 1994.

Third-Party Respondent, Austin B. Chapman's Submission Agreement signed on: August 16, 1994.

HEARING INFORMATION

Pre-Hearing Conference: March 8, 1995 for One (1) session.

Hearing Date/Sessions: March 14, 1995 for Two (2) sessions.

Hearing Location: Detroit, Michigan.

CASE SUMMARY

Claimant Chapman, alleged that Respondent Prudential engaged in omissions, mismanagement, negligent supervision and breach of fiduciary duty. Chapman specifically alleged that:

1. Chapman, an unsophisticated investor, conducted all her investing through Austin B. Chapman, an agent of Prudential;
2. Chapman's primary investment objective was safety of principal with long-term growth as a secondary objective;
3. Chapman relied on Prudential's recommendation that limited partnerships would meet Chapman's investment objectives;
4. Prudential knew or should have known that these investments were being grossly misrepresented as safe and that they were not suitable for Chapman's objectives.

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

Respondent/Third-Party Claimant Prudential denied all wrongdoing in the handling of Chapman's account, alleging that:

1. Chapman's husband, Austin B. Chapman, was a knowledgeable broker and

handled her account. In November, 1983, Austin B. Chapman opened Chapman's account stating income, long-term growth and speculation were her investment objectives;

2. Chapman made investments based on the her husband's advice and Bill Yost, a personal friend of Austin B. Chapman. Bill Yost was employed by Graham Energy, and was not an employee of Prudential; and

3. As a Prudential broker, Austin B. Chapman was aware of the inherent risks within the limited partnerships.

In addition, Respondent/Third-Party Claimant asserted the following affirmative defenses:

1. Prudential is not responsible for the alleged misstatements by Bill Yost;
2. If the allegations are true, Austin B. Chapman, not Prudential, was negligent in relying on Yost's alleged representations;
3. Chapman's account was not a discretionary account. Under federal and Michigan law, Prudential did not owe Chapman fiduciary duties;
4. The claim is barred by the statute of limitations; and
5. Chapman failed to mitigate her damages.

Respondent/Third-Party Claimant Prudential asserted a claim against Alan B. Chapman for contribution and indemnity.

Third-Party Respondent Austin B. Chapman denied being held responsible for indemnification to Prudential. Austin B. Chapman asserted that Prudential and its agents mislead its brokers in the promotion of the limited partnerships. Because of Prudential's misrepresentations, Austin B. Chapman was unable to fully assess the risk of the investments.

RELIEF REQUESTED

Claimant Carol Chapman, requested an award against Prudential in excess of \$30,000.00 representing actual damages, punitive damages, exemplary damages, costs and interest.

Respondent/Third-Party Claimant Prudential requested the panel award nothing to the Claimant and dismiss the proceedings. In the alternative Prudential requested an award against Third-Party Respondent Austin B. Chapman in the full amount of any award in favor of Claimant Carol

Chapman, and that Austin B. Chapman be assessed all hearing and forum fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Prudential did not file an executed submission agreement, but answered and appeared at hearing, and is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The Third-Party Claim is hereby dismissed with prejudice and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Conference before One (1) arbitrator x \$300.00 per conference = \$300.00; Two (2) hearing sessions x \$600.00 per session = \$1,200.00; Total Forum Fees = \$1,500.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 filing fee and the

\$400.00 hearing session deposit previously paid by Claimant Carol Chapman. The NASD shall also retain the \$500.00 Third-Party Claim filing fee and the \$600.00 Third-Party Claim hearing session deposit previously paid by Respondent/Third-Party Claimant Prudential Securities Incorporated. In addition Respondent/Third-Party Claimant Prudential Securities Incorporated is liable for and shall pay to the NASD the sum of \$500.00 as the balance of the forum fees due.

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

Concurring Arbitrators' Signatures

Name

Date:

/s/ Thomas Kizer, Jr., Esq.
Thomas Kizer, Jr., Esq.
Public Arbitrator
Chairperson

August 7, 1995

/s/ Richard H. Potter
Richard H. Potter
Public Arbitrator

August 4, 1995

/s/ James F. Mooney
James F. Mooney
Industry Arbitrator

August 3, 1995

For NASD Use Only

Date of Decision: August 10, 1995