

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert & Margaret Berinhout

93-03365

Name of Respondents

Prudential Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 26, 1993, Claimants Robert and Margaret Berinhout, who appeared Pro Se, alleged that they purchased 600 shares of Ilio Inc. stock from Respondent. Claimants further alleged they told their broker at Respondent that they were saving for retirement in two years and they could not gamble with risky investments. Claimants contended that the Ilio, Inc. stock was a very risky investment which was unsuitable for them. As a result of the above, Claimants contended that they had suffered damages for which the Respondent should be held liable.

Respondent Prudential Securities, Inc., through its in-house counsel Mark L. Seffinger, New York, New York, maintained that the Claimants' stated objective in investing with Respondent was that of speculation and trading. Respondent further maintained that its broker fully explained the merits and risks of an investment in Ilio, Inc. stock with the Claimants, and after this discussion the Claimants decided to make the investment in question. Respondent contended that based on its merits at the time, Ilio, Inc. stock was an appropriate and suitable investment for Claimants, consistent with their investment objectives. Respondent contended that this investment represented under 15% of Claimants' entire portfolio at the time of purchase. Respondent further contended that the decrease in value of Claimants' Ilio investment over time was a function of market performance, and that Claimants received regular monthly statements which clearly stated the current value of the Ilio stock, yet at no point in time did

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they attempt to sell their stock in this company. Respondent maintained that the Claimants' claim was time barred by Section 12(2) of the Securities Act of 1933 or Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimants Robert and Margaret Berinhout requested \$7,723.00 in actual damages, plus interest and the cost of filing this arbitration.

Respondent Prudential Securities, Inc. requested that the Claimants' Statement of Claim be dismissed in its entirety and that costs be awarded in its favor.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Chandler Bridges, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on August 23, 1993 and by the Respondent on October 8, 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. Respondent Prudential Securities, Inc. is liable and shall pay to Claimants Robert and Margaret Berinhout \$7,723.00 in actual damages.
2. Respondent Prudential Securities, Inc. is liable and shall pay to Claimants Robert and Margaret Berinhout simple interest at the rate of 4% from June 1990 to June 1994.
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 shall be retained by the NASD, Inc. Respondent Prudential Securities, Inc. is liable and shall pay to Claimants Robert and Margaret Berinhout \$150.00 as reimbursement of the filing fee.

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AFFIRMATION

I, **CHANDLER BRIDGES, ESQ.**, do hereby affirm upon my oath of 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: June 27, 1994