

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Delmo Ferrari, et al.

vs.

Case No.  
93-03463

**Name of Respondents**

Prudential Securities Inc  
Ian Lee Finberg  
Ray Juskewicz

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**REPRESENTATION**

For Claimants, Delmo and Alba Ferrari of Del's Hair Styling and Cutting Salon, Joel P. Suttensburg, Esq. and David Grossack, Esq. located in Boston, Massachusetts.

For Respondents, Prudential Securities, Inc. ("PSI") Ray Juskewicz ("Juskewicz"), David Becker, Esq. from the law firm of Kutak Rock located in New York, New York.

Respondent, Ian Lee Finberg ("Finberg") did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim was filed on September 3, 1993.

Claimant's Submission Agreement was signed on August 16, 1993.

Amended Statement of Claim was filed on October 4, 1994.

Joint Statement of Answer was filed by Respondents, Prudential Securities, Inc. and Ray Juskewicz on January 24, 1994.

Respondent Finberg did not file a Statement of Answer or execute a Submission Agreement. (See "Other Issues Considered and Decided section of this decision.")

**HEARING INFORMATION**

Pre-Hearing Conference:

October 4, 1994-1 session  
November 11, 1994-1 session

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Hearing Dates/Sessions:           November 15, 1994/2 sessions  
  November 16, 1994/2 sessions  
  January 17, 1995/2 sessions  
  January 18, 1995/2 sessions

Hearing Location: American Arbitration Association located at 133 Federal Street Boston, Massachusetts.

### **CASE SUMMARY**

Claimants commence this arbitration claim to recover damages as a result of their investment in Prudential-Bache Energy Income Partnership and their investments in options and stocks on the recommendation of Respondent Finberg. Claimants allege that the limited partnership was of poor quality, that Respondents failed to send them a prospectus and that the limited partnership and option trades were unsuitable for their retirement funds.

Claimants also allege that Respondents recommended that they purchase Polaris Aircraft Income Fund and failed to provide them with a prospectus as well. Claimants further allege that respondents made the recommendation for the purpose of generating commissions. Claimants contend that Prudential-Bache became concerned about the management of the limited partnership and ceased participating as an investor but failed to inform its customers of this fact.

Respondents Prudential-Bache, Inc. and Juskewicz assert seventeen affirmative defenses, deny each and every allegation of impropriety contained in the Statement of Claim and deny liability to the Claimants. Said Respondents contend that all investments in Claimant's accounts were suitable and consistent with their investment objectives. Said Respondents also contend that Claimants were provided with prospectus as required at the time of their investments.

Said Respondents moved to dismiss certain purchases made prior to June 1990, pursuant to Lampf, Pleva, Lipkind, and Pettigrow v. Gilbertson, 59 U.S.L.W. and 688, 111 S. Ct 2773, 115 L. Ed. 2d321(1991). Respondents also moved to dismiss claims based upon the violation of NASD rules as there is no private right of action.

### **RELIEF REQUESTED**

Claimants request an award of \$188,986, punitive damages, costs of this arbitration and reasonable attorney's fees.

Respondents PSI and Juskewicz request that the claim be dismissed in its entirety and that Claimants be required to pay all the filing and forum fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Finberg did not appear at the hearing to present a defense. Based upon the notice that were sent by the NASD and the communications between him and David Baker, attorney for PSI and Juskewicz, this panel finds that notice was given to respondent Finberg and proceeded with the hearing in his absence pursuant to Sections 25 and 29 of the *Code of Arbitration Procedure* ("Code").

During the hearing, Respondents PSI and Juskewicz moved to dismiss the claims involving Prudential Bache Energy Income Fund as these claims were the subject of a class action and Claimants failed to opt out of the class in accordance with Section 12(d) of the *Code*. Claimants opposed the motion on the grounds that they opted out of the class when they informed counsel involved in the class action even though that counsel was not the designated person to receive notice.

After hearing arguments and reviewing Claimants submissions dated November 29, 1994 and December 20, 1994 and respondents submissions dated December 14, 1994 and December 20, 1994, this panel determined January 9, 1995 that Claimants opted out of the class.

After the hearing concluded, Respondents moved in United States District Court, Eastern District of Louisiana for an Order Enforcing the Court's Final Judgement Against Class Members Delmo and Alba Ferrari. This panel was then informed by Respondents' letter dated February 21, 1995, that its motion was granted by the Court which held that Claimants could not pursue any claims concerning their investment in Prudential-Bache Energy Income Fund in arbitration.

Accordingly, this panel's decision concerning the remaining claims is contained in the Award section of this decision.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents are denied.
2. The claims for attorney's fees, expert witness fees and costs are denied.

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### FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed equally between Claimants and Respondents.

Non-refundable filing fee	\$200
Pre-hearing conference fees	\$600 (2 conferences @ \$300.00 per conference)
Hearing session fees	\$6000.00 (8 hearing sessions @ \$750 per session)
Total Fees	\$6,800.00

1. Claimants are assessed at \$3,400.00. Claimants are also assessed \$375.00 one-half of the fee for postponement of the hearing that was scheduled for October 5, 1994 and October 6, 1994. Claimants previously paid \$950.00 and owe a balance of \$3,025.00

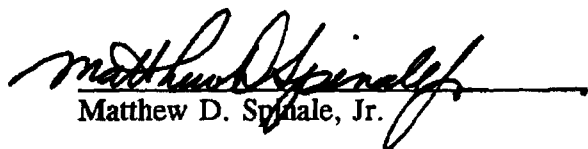
2. Respondents PSI and Finberg are jointly and severally assessed \$3,400.00. PSI is further assessed \$750.00 for the postponement of the hearing that was scheduled for August 15, 1994. PSI is further assessed \$375.00, one-half of the fee for postponement that was scheduled for October 5, 1994 and October 6, 1994. PSI previously paid \$750.00 and so a balance of \$3,775.00 is owed between Respondents PSI and Finberg.

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

### ARBITRATION PANEL

June Y. Kilmax, Esq.	-	Public Chairperson
Matthew D. Spinale Jr.	-	Public Panelist
James E. Fox	-	Industry Panelist

Concurring Arbitrator's Signature

  
Matthew D. Spinale, Jr.

Date of Decision:

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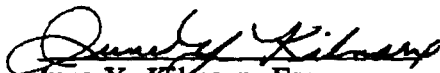
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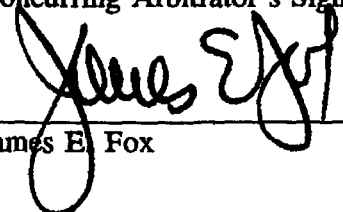
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James E. Fox

Date of Decision: May 2, 1995