

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Paul and Jeanne Palmisano

93-03598

Name of Respondents

Prudential Securities Inc
Donald Kelly

REPRESENTATION

For Claimants Paul and Jeanne Palmisano ("Claimants"): John J. Blanchard,
Attorney at Law in Atlantic City, New Jersey:

For Respondents Prudential Bache Securities, Inc. ("Prudential") and Donald Kelly
("Kelly"): Rita Durant, Esq., of the law firm of Durant & Durant, Philadelphia,
Pennsylvania.

CASE INFORMATION

Statement of Claim filed: September 13, 1993.

Claimant's Submission Agreement signed on: September 9, 1993 .

Statement of Answer filed by Prudential on: April 29, 1994.

Statement of Answer filed by Kelly: December 8, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: July 19, 1994 - two sessions
July 27, 1994 - one session

Hearing Location: NASD Office - Philadelphia, Pennsylvania

CASE SUMMARY

Claimants alleged, among other things, that Mr. Palmisano is an elderly retiree suffering from failing health. Claimants alleged that Mrs. Palmisano is an elderly unsophisticated investor and a retiree who never worked. Claimants alleged that prior to 1986, neither Claimant had ever had a brokerage account. Claimants alleged that they opened a brokerage account at Kelly's urging. Claimants alleged that because of their limited retirement assets they insisted that Kelly make their investments with the objective of preservation of principal. Claimants alleged that based on this conservative strategy they set up three accounts with Prudential.

Claimants alleged that Prudential, through its agent, Kelly, made unsuitable and speculative investments in their accounts. Claimants alleged that Kelly invested the initial contribution to Mr. Palmisano's retirement account in Colonial Government Securities ("Colonial Government"). Claimants alleged that Kelly assured Claimants that there was no risk to the principal with this transaction. Claimants alleged that Kelly then invested in VMS Mortgage LP II, a high risk real estate limited partnership. Claimants alleged that such risk was never disclosed and ran contrary to their stated investment objective. Claimants alleged that Kelly also invested in Resort International Casino "junk bonds" ("Resort International"). Claimants alleged that they expressed concern to Kelly that these investments were too risky, but Kelly insisted there would be no risk to the principal. Claimants alleged that they subsequently took a loss on both Colonial Government and Resort International. Claimants alleged that Kelly immediately invested in another high risk investment, National Security Fund, which was also sold at a loss. Claimants alleged that the total losses on the Paul Palmisano Retirement Account amounts to two-thirds of the original investment. Claimants alleged that the total losses suffered in their joint account as a result of similar speculative and risky investments was \$45,121.

Respondents Kelly and Prudential (collectively referred to as "Respondents") categorically denied all allegations of wrongdoing. Prudential maintained that Claimants made no specific allegations against them in their claim. Prudential maintained that all Claimant's claims are barred by the statute of limitations. Prudential maintained that each transaction was reasonable and suitable for the Claimants at the time it was made and any loss was due to market conditions. Prudential maintained that Claimant's stated investment objective for their joint account was safety of principal, long-term growth and income. Prudential maintained that Mr. Palmisano's investment objective for his retirement account was safety of principal and income. Prudential maintained that Mr. Palmisano reviewed the prospectus of Colonial Government and fully discussed it with Kelly prior to its purchase. Prudential maintained that Mr. Palmisano was made "whole"

for this loss by a settlement with Collective Federal Savings Bank. Prudential maintained that Mr. Palmisano, as a businessman, was familiar with Resorts International who had been a customer of Palmisano's business, Seashore Fruit, for six years. Prudential maintained that Mr. Palmisano believed the bonds were a good investment and suitable for his objectives because they paid a high yield. Prudential maintained that Kelly was in frequent contact with the Palmisano's from 1986 to 1990. Prudential maintained the Kelly discussed each transaction with the Claimants before it was made and the Claimants assumed the risk associated with the investments. Prudential maintained that neither punitive damages nor attorneys' fees are recoverable by Claimants as a matter of law.

Kelly maintained that Claimants knew him through the Lion's Club for six years prior to their business relationship. Kelly maintained that Mr. Palmisano approached him about handling his investments. Kelly maintained that the Claimants, through their lifestyle and assets, gave the impression that they were extremely well-off. Kelly maintained that each investment made on the Claimant's behalf was made after discussing it with them and reviewing the investment for suitability. Kelly maintained that the Claimants failed to include distributions and a settlement with Collective Federal Savings Bank in computing the losses of their account. Kelly maintained that the losses of the Resort International bonds were due to market conditions rather than unsuitability.

RELIEF REQUESTED

Claimants requested that the money lost from the unsuitable and speculative investments be returned to them. The Claimants in their pleadings requested \$108,593 in actual losses from their accounts, the loss of interest on their funds which amounts to \$30,000 and the reimbursement of the Claimant's \$500 filing fee for this proceeding. Claimants also requested punitive damages in an amount equal to ten times their losses or \$1,000,000.

Respondents requested that Claimant's claim be denied in its entirety and that the Panel award Respondents all costs and fees associated with defending this claim.

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 original remains on file with the NASD. Respondents Prudential and Kelly did not execute a Uniform Submission Agreement, however, they did submit answers and were represented at the hearings. Therefore pursuant to the Panel's authority

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under Section 12 of the Code of Arbitration Procedure the Panel exercised its jurisdiction over the Respondents notwithstanding their failure to execute Uniform Submission Agreements.

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. That with Respect to Growth Hotel II the Panel decided to deny Claimants' Motion to Overturn the preliminary decision of the Director of Arbitration and therefore confirm that the Claimants' claim concerning Growth Hotel II shall be dismissed pursuant to Section 15 of the Code of Arbitration Procedure.
2. On the remaining issues presented by Claimants, the Panel awards damages in favor of Claimants against Respondents in the amount of \$13,000; exclusive of interest.
3. That Claimants' claims for punitive damages is denied in its entirety.
4. That the parties shall bear their respective costs and attorneys' fees except as delineated below.

FORUM FEES

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

3 hearing sessions x \$1,000 = \$3,000

Forum Fees Assessed equally between Claimants and Respondents, however Claimants may off-set their forum fees of \$1,500 with their initial Hearing Session deposit of \$1,000 so that the amount due from Claimants is \$500. Respondents are jointly and severally liable and shall pay forum fees in the amount of \$1,500.

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

Concurring Arbitrator's Signature
Name Richard B. Laden
Richard B. Laden

Public/Industry

NASD Date of Decision: August 5, 1994

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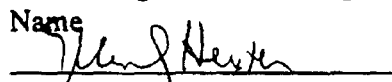
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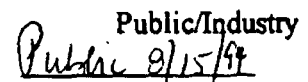
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Concurring Arbitrator's Signature

Name

Ellen S. Hexter

Public/Industry


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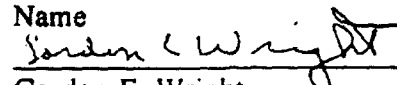
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Concurring Arbitrator's Signature

Name


Gordon E. Wright

Public/Industry

INDUSTRY