

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James C. and Deborah D. Tate

93-04230

Name of Respondent

Prudential Securities Inc.

REPRESENTATION

Claimants James C. and Deborah D. Tate and the Estate of Ruth Tate ("Claimants") were represented by John J. Miller, Esq. of Nygaard and Miller of Overland Park, Kansas.

Respondent Prudential Securities Incorporated ("Prudential") was represented by Gabriel Loubier, Esq. of Prudential Securities, Inc. of New York, New York.

CASE INFORMATION

Statement of Claim filed: October 14, 1993.

Claimant's Submission Agreement signed on: October 5, 1993.

Statement of Answer filed by Prudential on: February 18, 1994.

The NASD does not have a record of Prudential having filed a Submission Agreement.

Respondent's Motion In Limine to Exclude Evidence filed: September 2, 1994.

HEARING INFORMATION

Hearing Date/Sessions: September 12, 1994 for Three (3) Sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimants alleged that Robert Paul ("Paul"), a Registered Representative employed by Prudential made false representations to them in order to place their funds in unsuitable investments. The Claimants specifically allege that:

1. The Claimants had little investment experience with securities and were "novices" in the selection of stocks, mutual funds and other investments; James and Deborah Tate held safe insured bank deposits and CD's prior to opening their account at Prudential in January 1989; Ruth Tate was a widow who was safety and income oriented.
2. The Claimants expected and were assured by Paul that they would invest only in conservative, long-term growth and income investments; the Claimants then ceded control of their accounts to

Paul, who acted as a fiduciary;

3. Despite his assurances, Paul purchased for the Claimants accounts shares of: the fraudulently managed Prudential-Bache Energy Income Fund Series VI P-24 which was misrepresented as safe; First Executive Corporation common and preferred stock, despite the fact that the stock speculative and was rapidly declining in price; Equity Income Fund, Environmental Technology Trust Series 1 which Paul led the Claimants to believe was a liquid investment but later revealed that the investment could not be sold;

4. As a result of Paul's actions, the Claimants suffered substantial losses.

Based on the above allegations, Claimants asserted claims for violation of the Missouri Merchandising Practices Act (§407.025 Missouri Revised Statutes, 1986); common law fraud and misrepresentation; negligence; breach of contract and violation of NASD Rules; breach of fiduciary duty; and violations of Federal RICO laws (18 USC §1961 et seq.).

Prudential denied the material allegations of the Statement of Claim, alleging that:

1. The Claimants each received a prospectus on the Energy Income P-24 fund which accurately disclosed in detail the risks associated with the investments; furthermore, the Claimants have not asserted any specific material misrepresentation or omission by Prudential upon which they reasonably relied in making any of their investment decision;

2. A prior ruling by the United States District Court, Eastern District of Louisiana has ruled that the facts disclosed in the Energy Income P-24 prospectus may be imputed to the Claimants as a matter of law, precluding any reasonable reliance on oral misrepresentations or marketing materials that were contradicted by the prospectus;

3. Claimants' damages were not proximately caused by any act committed or legally attributable to Prudential; the market for investments in the oil and gas industry crashed through no fault of Prudential;

4. The Claimants' accounts were not discretionary nor did Paul have "control" of these accounts; furthermore, each position was discussed with Claimants before it was established and approved in advance. Confirmation and monthly statements were regularly provided to Claimants;

5. Claimant James Tate's purchases of First Executive common stock reflect an "averaging down" strategy which Mr. Tate knew, based on past experience, could just as easily lose money as earn a profit; regarding the Equity Income Fund, Environmental Technology Trust Series 1, no specific allegations are made sufficient to state a cause of action.

Prudential asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;

2. Claimants, at all relevant times, had or should have had full knowledge of all material facts concerning the investments they made;

3. Claimants directed and authorized the execution of all transactions in their account and are estopped from bringing this action;
4. Claimants may not recover because they ratified all activity in their accounts;
5. Prudential did not make any misrepresentations or omissions with respect to the investments made in Claimants' accounts;
6. Claimants knew of the alleged untruths or omissions;
7. Prudential did not know, and in the exercise of reasonable care could not have known, of the alleged untruths or omissions;
8. The relief requested is barred by Claimants' assumption of risks inherent in all securities transactions;
9. Claimants' losses are the result, in whole or in part, of the unforeseen price fluctuations in volatile securities markets in which Claimants knowingly and willingly participated;
10. The allegations relating to punitive damages are merely conclusory and fail to set forth facts sufficient to state a claim for recovery of such damages;
11. Arbitrators do not have authority to award punitive damages;
12. The relief requested is barred by the applicable statutes of limitation;
13. The purported wrongdoing on the part of Prudential was not the proximate cause of the Claimants' losses;
14. Claimants have not incurred any damages arising from the actions of Prudential;
15. Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably, prudently and responsibly bar any recovery of damages;
16. Claimants are barred from recovery because they failed to mitigate their damages;
17. Claimants did not sustain any loss or damage;
18. Claimants did not justifiably rely upon any alleged misstatements or omissions by Prudential;
19. Claimants' accounts were not invested in contradiction to their investment objectives;
20. Claimants have failed to establish a right to bring claims in the name of the Estate of Ruth Tate;
21. The Estate of Ruth Tate has no right to submit a claim inasmuch as they previously transferred ownership interests in the subject investment.

RELIEF REQUESTED

Claimants requested entry of award against Prudential for rescission of investments in the sum of \$45,754.00, plus a fair return of this original investment; punitive damages; trebled RICO damages; and reasonable attorneys'

fees, costs, and expenses.

Prudential requested that the Statement of Claim be dismissed in its entirety and that Prudential be awarded all costs and attorney's fees that they have incurred in this matter.

OTHER ISSUES CONSIDERED & DECIDED

Prudential has not filed with the NASD a Submission to Arbitration as required pursuant to Section 12 of the NASD Code of Arbitration Procedure. However, Prudential has Answered the Statement of Claim and appeared at the hearing. Therefore, Prudential is bound by the determination of the arbitrators on all issues submitted.

At hearing on September 12, 1994, the Panel heard argument on Respondent's Motion to Strike the pleadings of the Estate of Ruth Tate filed on September 2, 1994. After review of the arguments filed on this issue, the Panel has determined that the Motion shall be denied.

At hearing on September 12, 1994, the Panel heard argument on Respondent's Motion to Exclude Evidence relating to prior Prudential Energy funds. The Panel has determined that the Motion shall be denied.

At hearing on September 12, 1994, the Panel heard argument on Respondent's Motion that the First Executive common stock loss not be ruled upon because of Claimants' participation in a class action in which Respondent is not a party. The Panel has determined that the Motion be denied. Furthermore, the parties are informed that an assignment and release in favor of Respondents from Claimants of any recovery in the First Executive class action is not necessary.

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. Respondent Prudential Securities Incorporated is liable for, and shall pay to James C. and Deborah D. Tate the sum of \$12,750.00 plus 6% simple interest from September 12, 1994 until paid;
2. Respondent Prudential Securities Incorporated is liable for, and shall pay to the Estate of Ruth Tate the sum of \$11,809.00 plus 6% simple interest from September 12, 1994 until paid; and
3. All other claims asserted by the parties are denied and dismissed with prejudice.

OTHER COSTS

The parties shall bear their own costs of arbitration, including attorneys' fees, except as set forth more fully below;

Respondent, Prudential Securities Incorporated is liable for, and shall pay to the Claimants the sum of \$750.00 as reimbursement of their hearing session deposit previously paid to the NASD.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) Hearing Sessions x \$750.00 per session; Total Forum Fees = \$2,250.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 Claim Filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant James C. and Deborah D. Tate.

Additional forum fees in the amount of \$1,500.00 are assessed against Prudential Securities Incorporated.

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

Concurring Arbitrators' Signatures
Name

Date

Matthew C. Haverly/s/
Matthew C. Haverly, Esq.
Public Arbitrator
Chairperson

September 29, 1994

Leonard S. Jackson, Jr./s/
Leonard S. Jackson, Jr.
Industry Arbitrator

September 29, 1994

Richard D. Sewell/s/
Richard D. Sewell
Public Arbitrator

September 30, 1994