

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

George C. Levine

94-00302

Name of Respondent

Prudential Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 25, 1994, Claimant George C. Levine ("Claimant"), through his representative, Steven M. Green, Esq., of San Diego, CA., alleged that Respondent Prudential Securities, Inc., represented to Claimant that it would handle his investments in an honest and prudent manner which induced him to open an account. Claimant further alleged that Respondent misrepresented that the security of Prudential Bach Energy Income Fund P-2 and Prudential Energy Income Fund P-23 were as good as certificates of deposit which caused Claimant to invest in each of them. Claimant contended that Respondent did not follow his investment objectives and investor profile by recommending highly speculative illiquid limited partnerships. Claimant further contended that Respondent did not properly supervise the development of promotional materials that were distributed to help sell its limited partnerships. Claimant alleged that as a result of the above he has suffered a loss for which the Respondent should be held liable.

Respondent Prudential Securities, Inc. through its representative, Robert B. Ericson, Esq., of Keesal, Young & Logan, Long Beach, CA., maintained that the investments that the Claimant refers to were suitable as suitability is measured at the time of the investment and not by the subsequent market conditions. Respondent further maintained that the Claimant received prospectuses which fully and accurately explained the risks of the investments. Respondent contended that the Claimant purchased Prudential-Bache Energy Income Limited Partnerships which were low risk but not risk free as was disclosed in the prospectuses which he had a duty to read. Respondent further contended that the Claimant cannot prove that there was misrepresentation or fraud because he has not shown that he relied upon communications made by the Respondent to his detriment, and as a result of the above, Respondent should not be held liable.

RELIEF REQUESTED

Claimant George C. Levine, requested \$10,000.00 in actual damages plus interest, costs and attorney's fees:

Respondent Prudential Securities, Inc., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herman R. Friedberg, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant George C. Levine, on December 27, 1993 and not by the Respondent Prudential Securities, Inc., as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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. The Respondent Prudential Securities, Inc., is liable and shall pay to the Claimant George C. Levine, \$2,000.00 in actual damages.
2. The Respondent Prudential Securities, Inc. is liable and shall pay to the Claimant George C. Levine, interest at the rate of 8% per annum from October 19, 1988, to the date of payment of the award.
3. The parties shall bear their respective costs.
4. All other relief requests are denied.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondent Prudential Securities, Inc., is liable and shall pay to the Claimant George C. Levine, \$150.00 as reimbursement of the filing fee.

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AFFIRMATION

I, **HERMAN R. FRIEDBERG, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "Herman R. Friedberg", is written above a horizontal line.

Herman R. Friedberg, Esq.

DATE OF DECISION: September 19, 1995