

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Margaret Cunningham

and

94-00399

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION OF PARTIES

Margaret Cunningham ("Claimant") was represented by Paul D. Hogan, Jr., Esq., Hogan and Hogan, Knoxville, Tennessee.

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

CASE INFORMATION

The Statement of Claim was filed on or about February 2, 1994. Submission Agreement of Claimant Margaret Cunningham was signed on January 24, 1994.

Statement of Answer was filed by Respondent Prudential Securities, Inc. on or about May 6, 1994.

HEARING INFORMATION

The hearing was held on Monday, June 19, 1995 in Nashville, Tennessee for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that she was a customer of Ron Keese, who was an employee of Prudential Securities at all relevant times. Claimant further alleged that she had no investment experience and invested in Telephone Gift Spirits, Inc. upon the recommendation of Mr. Keese. Specifically, Claimant alleged that Mr. Keese made misrepresentations to her to induce her to invest in the above mentioned securities thereby violating both the Tennessee Securities Act and the Securities

Exchange Act of 1934, breach of contract and fiduciary duty; engaged in common law fraud and negligent misrepresentation.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that it could only speculate on the basis of factual information, that the Claimant was willing to assume the risk of loss on her investment. Numerous affirmative defenses were also asserted by Respondent.

RELIEF REQUESTED

Claimant requested an award in the amount of \$40,000 plus prejudgment interest plus any and all other relief, including punitive damages, that the arbitrators may award.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Prudential Securities, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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, Inc. shall be and hereby is liable for and shall pay to the Claimant Margaret Cunningham the sum of **Ten thousand dollars (\$10,000)**.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were sessions two (2) x \$400 = \$800 in forum fees. Pursuant to §43(b)

a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$120 and shall **refund** the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant Margaret Cunningham. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$800 as forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Prudential Securities, Inc. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Edwin M. Walker, Esq.

Edwin M. Walker, Esq.
Public Arbitrator, Presiding Chair

July 12, 1995

/s/ Donald E. Rutledge

Donald E. Rutledge
Public Arbitrator

July 11, 1995

/s/ David M. Minnick, Esq.

David M. Minnick, Esq.
Industry Arbitrator

July 11, 1995