

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Randy Spicer

94-00589

Name of Respondents

Prudential Securities, Inc.
Richard Pascuzzi

CASE SUMMARY

In a claim filed with the National Association of Securities, Inc. on February 16, 1994, Claimant Randy Spicer ("Spicer"), who appeared Pro Se, alleged that Respondents Prudential Securities, Inc. ("Prudential") and Richard Pascuzzi ("Pascuzzi") placed him in an inappropriate term trust, the Hyperion 1999 ("Hyperion"). Claimant further alleged that he was retired, and his account at Respondent Prudential was for strictly "super safe income type investments". Claimant contended when the Hyperion units began to lose value, Respondent Pascuzzi assured him that the units were as safe as those sold to finance the Hyperion units. Claimant further contended that Respondent Pascuzzi advised him that the shares would regain their losses, and that Respondent Pascuzzi never advised Claimant to sell. As a result of the above, Claimant alleged that he has suffered a loss for which Respondent should be held liable.

Respondent Prudential Securities, Inc. through its representative and in-house counsel, Donald Littlefield, maintained that the Hyperion investment was designed to "return the original purchase price to the investor in 1999 while paying interest in the interim." Respondent further maintained that Hyperion has not performed as well as expected due to market changes, and that Claimant assumed the risk of such market changes. Respondent contended that the prospectus in Hyperion 1999 set forth the risks involved and the nature of the investment, and Claimant by his own admission assumed those risks. Respondent further contended that it never made any misrepresentations to Claimant, and that Respondent is not liable for market activity that affects a suitable investment. As a result of the above,

Respondent maintained that it should not be held liable in this matter.

Respondent Richard Pascuzzi, through his representative, Ralph Janvey, of Kasmir and Krage, L.P., Dallas, TX, maintained that Hyperion was suitable, and consistent with Claimant's investment objectives. Respondent further maintained that Claimant was provided with a copy of the prospectus which set forth the risks of an investment. Respondent contended that he ceased being Claimant's representative in October, 1992, and that the trust did not lose value until February, 1993. Respondent further contended that Claimant's contention that the trust was unsuitable was based on hindsight after the investment decreased in value, and that as a result of the above, Respondent should not be held liable in this matter.

RELIEF REQUESTED

Claimant Randy Spicer, requested actual damages in the amount of \$10,000.00.

Respondents Prudential Securities, Inc. and Richard Pascuzzi requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Douglas F. Pierce, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 9, 1994 and by the Respondent Richard Pascuzzi on May 2, 1994 and by Respondent Prudential Securities, Inc. on June 21, 1994.

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 Respondents Prudential Securities, Inc. and Richard Pascuzzi are jointly and severally liable and shall pay to Claimant Randy Spicer \$10,000.00 in actual damages.
2. The parties shall bear their respective costs.

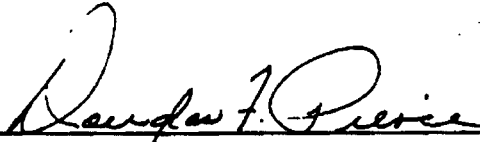
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3. All other relief requests are denied
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Randy Spicer, shall be retained by the NASD, Inc. The Respondents Prudential Securities, Inc. and Richard Pascuzzi are jointly and severally liable and shall pay to Claimant \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, DOUGLAS F. PIERCE, ESQ., do hereby affirm my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Douglas F. Pierce, Esq.

Date of Decision: August 29, 1995