

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Wallace F. and Phebe E. Smith,

Claimants,

-and-

No. 94-0664

Prudential Securities Incorporated,
Douglas Landgraf,

Respondent.

REPRESENTATION OF PARTIES

The Claimants, Wallace F. and Phebe E. Smith ("Claimants") were represented by Richard Shevits, Esq., of Cohen & Malad P.C. located in Indianapolis, Indiana.

The Respondent, Prudential Securities Inc. ("Respondent Prudential") was represented by Steven M. Malina, Esq., corporate counsel at Prudential Securities, Inc. located in Chicago, Illinois.

Respondent, Douglas Landgraf, ("Respondent Landgraf") was not represented by counsel.

CASE INFORMATION

The Statement of Claim was filed on or about February 22, 1994. The Claimants' Submission Agreement was signed on February 16, 1994.

The Statement of Answer was filed by Respondent Prudential on or about May 2, 1994. Submission Agreement of Respondent Prudential was signed on April 29, 1994 by William F. Luetting, First Vice-President of Prudential.

The NASD has no record of a Statement of Answer having been filed by Respondent Landgraf. The Submission Agreement of Respondent Landgraf was signed but not dated.

HEARING INFORMATION

A pre-hearing conference was held on May 17, 1995 for one (1) session.

The hearings were held on April 16, 1996 for two (2) sessions and April 17, 1996 for one (1) session.

CASE SUMMARY

Claimants alleged financial damages as the proximate result of Respondent's conduct as their broker. Specifically Claimants alleged:

- (1). Unsuitability - By recommending and placing their money in a highly speculative limited partnership without ascertaining their investment objectives it was in violation of the Securities Exchange Act of 1934, S.E.C. Rule 10(b)-5, and the Indiana Securities Act Section 23-2-1-1.
- (2). Misrepresentations and/or Omission - By recommending and placing their money in a highly speculative limited partnership without ascertaining their investment objectives it was in violation of section 10(b) of the 1934 Act, Rule 10(b)-5, and the anti-fraud provisions in the Indiana Securities Act.
- (3). Violations of the NYSE Rules 405, 407, and 408 - Respondent's failure to adhere to the NYSE "know your customer" rule.

Respondent Prudential denied all allegations set forth in the Statement of Claim.

Respondent Landgraf did not file an answer to the allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of:

- (1). The return of commissions and service charges, the exact amount which was unknown at the time of filing;
- (2). Actual losses in the amount of \$50,000.00 or, in the alternative, the present value of \$100,000.00 in the year 1988;
- (3). A reasonable rate of return had the Claimants funds been invested in suitable investments, namely, 15% for the sum of \$26,043.75 as of February 14, 1994;
- (4). Reasonable attorneys' fees;
- (5). Punitive damages in the sum of \$300,000.00.

Respondent, Prudential asked that all claims be dismissed.

Respondent Landgraf did not file a written request for relief.

OTHER ISSUE CONSIDERED & DECIDED

After one and one-half (1 1/2) days of hearing sessions, Claimants settled their claim against Prudential Securities, Inc. and in accordance with that agreement, Prudential is no longer a Respondent in this matter.

Respondent Landgraf appeared for the first day of hearing. He did not appear for the second day of hearing. The arbitrators determined pursuant to Section 29 of the NASD Code of Arbitration Procedure that Respondent had received due notice of the hearing and ruled that the arbitration should proceed without him.

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 Respondent Landgraf is liable for and shall pay \$50,000.00 in damages based upon the October 2, 1995 promissory note issued by the Respondent, Landgraf.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) prehearing conference x \$300 and there were three (3) sessions x \$750, for a total of \$2,550.00 less the \$750 previously deposited by Claimants for a total due of \$1, 800 in forum fees. The forum fees shall be assessed to be paid evenly by Claimants and Respondent Landgraf. Therefore Claimants shall pay \$525 in forum fees and Respondent Landgraf shall pay \$1,275 in forum fees to the NASD.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants. The NASD shall retain the postponement fees in the amount of \$375 previously deposited with the NASD by the Claimants.

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

Concurring arbitrators' signatures:

Name:

/s/ Steve C. Bach 5-2-96

Steve C. Bach, Esq.	Dated
Chairperson	
Public Arbitrator	

/s/ George W. Harding 7/1/96

George Harding	Dated
Panelist	
Industry Arbitrator	

/s/ Gary K. Moss 7/1/96

Gary K. Moss	Dated
Panelist	
Industry Arbitrator	

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Date Award Served on the parties: July 3, 1996