

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Steve and Phyllis Brkovich

94-00704

Name of Respondent

Prudential Bache Securities, Inc.

REPRESENTATION

Claimants, Steve and Phyllis Brkovich appeared at the hearing pro se.

Respondent, Prudential Bache Securities, Inc. was represented by Christopher M. Mone, Esq. of Prudential Securities, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on February 25, 1994.

Claimants, Steve and Phyllis Brkovich's Submission Agreement was signed on April 15, 1994.

A Statement of Answer was filed with the NASD by Respondent, Prudential Bache Securities, Inc. on July 27, 1994.

Respondent, Prudential Bache Securities, Inc. failed to file an executed Submission Agreement with the NASD.

HEARING INFORMATION

The Hearing Date was June 15, 1995 and the hearing lasted for one (1) hearing session.

The hearing location was Indianapolis, Indiana.

CASE SUMMARY

Claimants, Steve and Phyllis Brkovich ("the Brkovichs") alleged that Respondent, Prudential Bache Securities, Inc. ("Prudential") sent them too much money on a monthly basis which caused them damages. The Brkovichs asked Prudential Securities to send them a monthly check which was to be drawn from interest/dividends/distributions only. The Brkovichs alleged that the monthly checks were supplemented by monies from the amount of principal on deposit with Prudential.

Respondent, Prudential alleged that a review of the Brkovichs' monthly statements revealed that only \$1,446.78 was drawn from the principal to supplement the shortfall in their monthly checks caused by the lower dividend or interest payments. As such, Prudential asserted that the Brkovichs suffered no loss as they ultimately received the money and any depletion of principal was clearly set forth in their monthly account statements. Therefore, the Brkovichs failed to set forth a claim upon which relief could be granted.

RELIEF REQUESTED

The Brkovichs requested damages in the amount of \$11,459.00 less fees and market changes.

Prudential requested dismissal of the claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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.

Prudential failed to file an executed Submission Agreement with the NASD but it was required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("the Code").

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Prudential is liable for and shall pay to the Brkovichs, the sum of Eleven thousand five hundred dollars and no cents (\$11,500.00); and,
2. Other than Forum Fees which are addressed below, the parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. Prudential shall pay to the NASD, the sum of \$400.00 as Forum Fees. This sum reflects a single hearing session charged at the rate of \$400.00. The Brkovichs are assessed the \$100.00 non-refundable claim filing fee.

Forum Fees are payable directly to the NASD.

Concurring Arbitrators' Signatures

/s/ William H. Tobin
William H. Tobin, Esq.
Presiding Chairperson
Public Arbitrator

September 27, 1995
Dated

/s/ Dale Hunt
Dale E. Hunt
Panelist
Public Arbitrator

September 27, 1995
Dated

/s/ Thomas McAllister
Thomas J. McAllister
Panelist
Industry Arbitrator

September 27, 1995
Dated

For NASD Use Only

Date Award served on the Parties by the NASD: September 27, 1995

