

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Lugene Roehrman,
Ethel Zakroff,
Susan Cohill, and
Jack Greenberg,

Claimants,

v.

No. 94-00944

Prudential Securities Incorporated,
Respondent

REPRESENTATION OF PARTIES

Claimants Lugene Roehrman, Ethel Zakroff, Susan Cohill, and Jack Greenberg ("Claimants") were represented by Ronald N. Hanley, Esq., Scottsdale, Arizona. Susan Cohill did not participate as a party in the hearings listed below.

Respondent Prudential Securities Incorporated was represented by Keith Beauchamp, Esq. of Lewis & Roca, Phoenix, Arizona.

CASE INFORMATION

Claimants Lugene Roehrman's, Ethel Zakroff's, and Susan Cohill's Statements of Claim were filed on or about February 23, 1994. Claimants Lugene Roehrman's, Ethel Zakroff's, and Susan Cohill's Submission Agreements were signed on February 23, 1994.

Claimant Jack Greenberg's Statement of Claim was filed on or about February 24, 1994. Claimant Jack Greenberg's Submission Agreement was signed on February 24, 1994.

Respondent's Statements of Answer were filed on or about May 4, 1994.

Order dated January 25, 1994, from the Superior Court of Arizona, Maricopa County, directing this matter to arbitration.

HEARING INFORMATION

Hearing dates: April 18, 1995; Two (2) sessions.
April 19, 1995; Two (2) sessions.

April 20, 1995; Three (3) sessions.
April 21, 1995; Two (2) sessions.
May 4, 1995; One (1) session.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimants alleged that Respondent: made untimely delivery of prospectuses in violation of A.R.S. Sections 44-1898 and 44-1991; violated A.R.S. Section 13-2301 et seq.; made unsuitable investments in violation of NASD and NYSE Rules and Arizona Administrative Code R14-4-130; violation of 15 U.S.C. 80b-6 through self-dealing without advising the purchaser of any recommended security that the dealer himself has an interest in the issue; and violations of CFR 240.10b-10, 17 CFR 240.15c1-5, 17 CFR 240.15c1-6, and 17 CFR 240.15c1-8 by failing to tell a customer what interest the dealer himself has in the issue; and that the investments were speculative, illiquid, and risky. The allegations arose out of investments in the following securities: Prudential Bache Energy Series III P-14; Polaris Income Fund III; Prudential Bache Energy Series V P-19; Prudential Bache Energy Series II P-10; Polaris Income Fund II; Prudential Bache Energy Series II p-8; Prudential Bache Growth Fund L.P.; VMS; and Polaris Aircraft.

Respondent denied the allegations asserted in Claimants' Statements of Claim. In addition, Respondent asserted that: The stated investment objectives were income; the investments in limited partnerships were suitable for Claimants; the prospectuses were delivered to the Claimants in a timely fashion; Respondent did not fail to comply with an Arizona regulation requiring that a sticker be affixed to certain prospectuses, and that in any event, even if Claimants could establish a failure to sticker, it would not provide any basis for recovery; the claims are barred by the applicable statutes of limitation; and any disappointments in returns from the limited partnerships was a consequence of economic factors for which Respondent was not responsible.

RELIEF REQUESTED

Claimant Eugene Roehrman requested an award for the return of her investment of \$15,000.00, interest at the rate of 10% per annum (\$11,000.00), treble damages of \$78,000.00, and costs of arbitration.

Claimant Ethel Zakroff requested an award for the return of her investment of \$15,000.00, interest at the rate of 10% per annum, (\$8,500.00) treble damages of \$70,500.00, and costs of arbitration.

Claimant Susan Cohill requested an award for the return of her investment of \$103,750.00, interest at the rate of 10% per annum (\$41,000.00), treble damages of \$434,250.00, and costs of arbitration.

Claimant Jack Greenberg requested an award for the return of his investment of \$143,126.55, interest

at the rate of 10% per annum (\$68,538.62), treble damages of \$634,995.51, and costs of arbitration.

Respondent requested that Claimants' Statements of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On or about March 1, 1994, Claimants requested that their cases be consolidated. Respondent filed its response on or about May 3, 1994. Claimant filed their reply to Respondent's response on May 12, 1994. On or about May 3, 1995, Respondent filed a Motion to Dismiss Claimant Jack Greenberg's VMS Hotel Investment Trust pursuant to Section 12(d) of the NASD Code of Arbitration Procedure (the "Code"). Mr. Greenberg filed his response on May 12, 1994. On or about May 3, 1994, Respondent made a motion for a determination that certain of the claims asserted were not eligible for arbitration under Section 15 of the Code. By letter dated May 12, 1994, Claimants filed their response to the motion. By letter dated June 3, 1994, Respondent filed its reply in support of its motion. On June 16, 1994, the Director of Arbitration ruled that: Pursuant to Section 12(d) of the Code, this matter would proceed with the exception of claims which are involved in a class action, unless Claimant could provide documentation of their choice to "opt-out"; Section 15 of the Code would not apply to any claims directed to arbitration by a court of competent jurisdiction; and Pursuant to Section 25(d) of the Code, the Claimants' Request for Consolidation was granted.

On April 17, 1995, Claimant Susan Cohill filed a Motion to Sever and Postpone her Claim pending resolution of a representation conflict. The motion was filed after learning of an out-of-state attorney's claim of his firm's representation of Ms. Cohill. The motion was heard during the first day of hearing in this matter. After hearing argument, and deliberation, the undersigned arbitrators granted the motion.

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain 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. Claimants' claims, are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth below.

Claimants and Respondent shall bear equally the forum fees associated with this arbitration.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

10 hearing sessions x \$1,000.00 = \$10,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall retain the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$4,000.00 are assessed against Prudential Securities, Inc.

Additional forum fees in the amount of \$3,000.00 are assessed against the Claimants.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 8, 1995

Charles A. Finch /s/
Charles A. Finch
Presiding Chair
Public Arbitrator

June 8, 1995

James M. Rapisarda /s/
James M. Rapisarda
Industry Arbitrator

June 14, 1995

Keith Folkman /s/
Keith Folkman
Public Arbitrator