

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Louis L. Pulcini and Carol A. Pulcini

94-01142

Name of Respondents

Prudential Securities Inc.
Edward Newmeyer

Consolidated With

In the Matter of Arbitration Between

Name of Claimants

James A. McDanel and Ruth Ann McDanel

94-01147

Name of Respondents

Prudential Securities Inc.
Edward Newmeyer

REPRESENTATION

For Claimants Louis L. Pulcini and Carol A. Pulcini (the "Pulcinis") and James A. McDanel and Ruth Ann McDanel (the "McDanels") appeared Kenneth R. Behrend, Esq. from the law firm of Behrend and Ernsberger located in Pittsburgh, Pennsylvania.

For Respondents Prudential Securities Inc. ("Prudential") and Edward Newmeyer ("Newmeyer") appeared Birgitta K. Siegel, Esq., Vice President and Associate General Counsel of Prudential Securities Inc. located in New York, New York.

CASE INFORMATION

The Statement of Claim on behalf of the Pulcinis was filed on: March 23, 1994.

The Pulcinis' Submission Agreement was executed on: April 27, 1994.

A Joint Statement of Answer to the Pulcinis' claim was filed by Respondent Prudential and Newmeyer on: July 7, 1994.

The Statement of Claim on behalf of the McDanel's was filed on: March 23, 1994.

The McDanel's Submission Agreement was executed on: April 28, 1994.

A Joint Statement of Answer to the McDanel's claim was filed by Respondent Prudential and Newmeyer on: July 7, 1994.

Neither Prudential nor Newmeyer filed a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:	June 13, 1995	-	2 Sessions
	June 14, 1995	-	1 Session

The hearings were held at the Westin William Penn located in Pittsburgh, Pennsylvania.

CASE SUMMARY

Claimant Louis Pulcini was a railroad worker for Conrail until 1984, when, at age 50, he incurred a career-ending injury which resulted in his receiving approximately \$400,000.00 after paying debts and expenses. Claimant Carol Pulcini is the wife of Louis Pulcini.

In May and June of 1986, Louis Pulcini contacted Respondent Newmeyer, a broker employed by Respondent Prudential at its Pittsburgh, Pennsylvania offices. Louis Pulcini alleged that he informed Newmeyer that his investment objective was income, that he was conservative in nature and that he had to protect his principal which was his sole source of income.

The Pulcinis alleged that, relying on the recommendations of Newmeyer, on June 17, 1986, they purchased 10,101 shares of VMS Mortgage Investors Ltd. Partnership II Depository Unit at \$10.00 a share, for \$99,999.90. The Pulcinis further alleged that, on June 25, 1986, 20,000 shares of PB High Yield Fund at \$10.77 a share were purchased for \$215,400.00.

The Pulcinis alleged that, in October and November of 1988, January and May of 1989 and January of 1990, they sold a total of 4,900 shares of PB Yield Fund at a loss of \$7,758.48. The Pulcinis further alleged that, in November and December of 1988, they repurchased 2,050 shares of PB High Yield Fund. The Pulcinis maintained that, by December of 1993, the loss in value of the PB High Yield Fund was \$40,243.00 and the loss in VMS Mortgage was \$95,260.00.

The Pulcinis alleged that the investments were unsuitable for their investment objectives and needs and constituted a violation of Section 10(b) of the Securities Act and the Rules of the NASD. The Pulcinis further alleged that Newmeyer engaged in deceptive acts and practices under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.C.S. § 201-1 et seq.) by making misrepresentations and engaging in fraudulent conduct.

Claimant, James McDanel was also a railroad worker for Conrail until 1986 when he incurred a career ending injury resulting in his receiving the net sum of \$125,000.00 from his employer. Claimant Ruth Ann McDanel is James McDanel's wife.

In April 1987, James McDanel contacted Newmeyer and informed Newmeyer that he wanted a safe, guaranteed income, that his investment objective was income, but that he had to protect his principal which was his sole source of income.

Relying on the recommendations of Newmeyer, on April 13, 1987, the McDanels purchased 4,000 shares of VMS Mortgage Investors Ltd. Partnership II Depository Unit at \$10.00 a share for \$40,000.00 and 600 shares in PB High Yield Fund at \$11.00 a share for \$66,000.00, for a total investment of \$106,000.00.

By December 1993, the price of VMS had dropped to 5 cents a share and the price of PB High Yield dropped to \$8.07 a share. In a class action suit involving VMS, Claimants received a payment of \$1,824.00. Claimants contend their net loss on VMS was \$36,176.00 and \$17,589.00 on PB High Yield Fund, for a total loss of \$53,765.00.

The McDanels alleged that the investments were unsuitable and that Newmeyer engaged in deceptive practices and fraudulent conduct, a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.C.S. § 201-1 et seq.), as well as NASD and New York Stock Exchange Rules.

Respondents Prudential and Newmeyer filed Motions to Dismiss both the Pulcini's and the McDanel's claims on the following grounds:

1. The 1986 purchases of PB High Yield Funds were barred by Section 15 of the Code of Arbitration Procedure.
2. The claim involving VMS Mortgage Investors were barred because Claimants were members of the certified class action litigation in the U.S. District Court of Illinois (E.D.) and received compensation.

Respondents Prudential and Newmeyer denied that any misrepresentations were made to the Pulcinis. Respondents maintained that the Pulcinis made their own investment decisions and were aware of and assumed any risks. Respondents further maintained that Pulcinis never complained about the investments until after the class action settlement.

Respondents Prudential and Newmeyer denied any misrepresentations or fraud with respect to the McDanels. Respondents further contended that the McDanels were aware of and accepted

any risks and ratified the purchases.

On May 22, 1995, the U.S. District Court for the Northern District of Illinois (E.D.) entered a Memorandum Opinion and Order enjoining Louis and Carol Pulcini and James and Ruth Ann McDanel from arbitrating the VMS Fund claims pending before the NASD against Prudential and Newmeyer.

The Director of Arbitration of the NASD, by letters of August 15, 1994, determined that the Pulcini's and McDanel's claims regarding purchases made prior to March 22, 1988 were ineligible for submission to arbitration pursuant to Section 15 of the Code of Arbitration Procedure, except as to allegations of wrongdoing occurring on or after March 22, 1988 with respect to those purchases. The panel of arbitrators has complied with the Order of the District Court and has followed the determination of the Director of Arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitration panel made the following rulings as to Prudential and Newmeyer, who file an answer in this arbitration, but failed to file a properly, executed submission of this dispute to NASD arbitration:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Prudential was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Prudential, pursuant to Section 12(a) of the Code.
3. The panel found that Newmeyer was a person associated with a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Newmeyer, pursuant to Section 12(a) of the Code. Additionally, Newmeyer executed a Form U-4 requiring him to arbitrate at this forum upon demand of the customer.
4. In view of 2 and 3 above, Prudential and Newmeyer were each required to file with the NASD an executed Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the panel found that the NASD properly served the Statement of Claim upon Prudential and Newmeyer pursuant to Sections 25(a) and (c) of the Code.

The parties 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.

RELIEF REQUESTED

Claimants Louis L. and Carol A. Pulcini requested the compensatory damages of \$165,400.00

plus interest of \$42,177.00, \$100,000.00 for pain and suffering, \$496,200.00 for unfair trade practices and punitive damages of \$1,405,900.00. The Pulcinis also requested attorneys' fees and such other and further relief as the arbitrators may deem fair, reasonable and in the interests of justice.

Claimants James A. and Ruth Ann McDanel requested compensatory damages of \$66,086.00 plus \$100,000.00 for pain and suffering, \$198,258.00 for unfair trade practices and punitive damages of \$561,731.00. In addition, the McDanels also requested attorneys' fees and such other and further relief as the arbitrators may deem fair, reasonable and in the interests of justice.

Respondents Prudential and Newmeyer requested that all claims of the Pulcinis and the McDanels be dismissed in their entirety.

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. All claims by Louis L. and Carol A. Pulcini against Prudential and Newmeyer be and hereby are dismissed in their entirety.
2. All claims by James A. McDanel and Ruth Ann McDanel against Prudential and Newmeyer be and hereby are dismissed in their entirety.
3. Each party shall bear their own costs, including attorneys' fees.
4. The Pulcinis' and the McDanels' requests for punitive damages be and hereby are denied.
5. The Pulcinis' and the McDanels' requests for treble damages be and hereby are denied.
6. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee previously paid by the Pulcinis and the \$250.00 non-refundable filing fee previously paid by the McDanels and have assessed the following forum fees:

3 hearing sessions x \$1,000.00	= \$3,000.00
minus Pulcini's hearing session deposit	= \$1,000.00
minus McDanel's hearing session deposit	= <u>\$1,000.00</u>
total outstanding	= \$1,000.00

Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 representing the amount of forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, reading "Andrew L. Weil".

Andrew L. Weil, Esq.
Public Chairperson

Robert R. Thomas
Public Arbitrator

Carl Hohnbaum
Industry Arbitrator

Date of Decision: September 8, 1995

Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 representing the amount of forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

Andrew L. Weil, Esq.
Public Chairperson



Robert R. Thomas
Public Arbitrator

Carl Hohnbaum
Industry Arbitrator

Date of Decision: September 8, 1995


Respondent Prudential be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 representing the amount of forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

Andrew L. Weil, Esq.
Public Chairperson

Robert R. Thomas
Public Arbitrator



Carl Hohnbaum
Industry Arbitrator

Date of Decision: September 8, 1995