

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Anthony and Ernestine Spirito

Case Number  
95-00627

Name of Respondent

Prudential Securities Inc

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**REPRESENTATION**

For Claimant: Gregory G. Campisi, Esq  
Roseland, New Jersey

For Respondent: Gerard J. Kowalski, Esq.  
New York, New York

**CASE INFORMATION**

Statement of Claim was filed on February 7, 1995

Claimant's Submission Agreement was signed on February 3, 1995

Statement of Answer with Counterclaim was filed by Respondent on June 13, 1995.  
Respondent's Submission Agreement was signed on June 13, 1995

**HEARING INFORMATION**

Pre-Hearing Conference: September 19, 1995

Hearing Date/Sessions: September 25, 1995 - 2 Sessions

Hearing Location: N.A.S.D., Inc.  
Broad Financial Center  
33 Whitehall Street  
New York, New York 10004

**CASE SUMMARY**

In this Statement of Claim, Claimants seek to recover damages for alleged misrepresentations and misinformation provided to them by the Respondent and which allegedly resulted in significant loss of

IRA retirement funds. Specifically, Claimants allege that Respondent convinced claimants to purchase the preferred stock of First Executive Corporation for Claimants' retirement account. Claimants also allege that the investment was inappropriate; that the securities are now worthless; that they have lost their total principal investment and that they failed to earn any return on the investment.

Claimants maintain that they made clear to their account representative, Mr. Lawrence Scott Newman, that they had no desire to be placed in high risk or speculative investments and instructed Mr. Newman to place their money in safe, liquid investments.

Claimants assert that Mr. Newman represented that First Executive Corporation preferred stocks were well researched and independently investigated and approved by Prudential, that the stock had an "A" rating, that the shareholders of the corporation's preferred stock would be paid dividends before the shareholders of the common stock. Claimants also assert that Mr. Newman represented that the shares had a "mandatory call" feature whereby 20% of the investment would be called each year for five (5) consecutive years at a price that at least equalled the investor's original purchase price. Claimants further assert they would not have purchased these stocks but for the representations made by Respondent.

Respondent denies all the allegations set forth in the Statement of Claim and interposed a Counterclaim for costs associated with defending the claim.

Respondent alleges that Claimants were experienced investors in that they had approximately twenty (20) years experience with stocks and bonds. Respondent also alleges that upon meeting the Claimants, Mr. Newman became familiar with the Claimants' investment background and objectives. Respondent further alleges that Mr. Newman did not have, nor at any time, exercised discretion over the Claimants' account.

Respondent maintains that in April, 1988, the Claimants opened retirement accounts with Mr. Newman. Respondent also maintains that Claimants initially purchased First Executive preferred stock within the IRA account in February, 1989 upon recommendation by Mr. Newman. Respondent further maintains that Prudential analysts closely followed First Executive Corporation for a number of years before Claimants made their purchase.

Respondent denies that Mr. Newman or Prudential made any intentional, negligent or reckless misrepresentation or factual omissions during conversations with the Claimants. Respondent asserts that Claimants asked for, and received, background information on First Executive Corporation. Respondent also asserts that First Executive Corporation was an extremely strong entity within a stable industry and its stocks traded at a stable price for almost five years prior to the Claimants' purchase and that all these factors contributed to the Claimants knowing and intelligent selection. Respondent further asserts that it lost all supervisory control over Claimant's account when the account was transferred to Smith Barney Inc. in June, 1990 at which time the shares were valued at \$66,215.00. Respondent finally asserts that Mr. Newman properly represented First Executive to the Claimants, that claimants understood that the risk and success of the investment depended on the performance and financial well being of First Executive Corporation, and that as a fixed income vehicle, the investment met the Claimants' investment objectives.

#### **RELIEF REQUESTED**

Claimants request damages in the amount of \$241,336.48.

Respondent requests that the Claim be dismissed in its entirety and the award of costs for defending this arbitration Claim.

### **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. Claimant is awarded damages in the amount of \$27,043.60 to be paid by Respondent.
2. Respondent's Counterclaim is denied in its entirety.
3. Respondent's request for dismissal of the Claim is denied.
4. Respondent is to pay all N.A.S.D. costs, including those previously paid by the Claimant.

### **FORUM FEES**

Pursuant to Section 43c of the "*Code of Arbitration Procedure*", the following Forum Fees are assessed against the Respondent.

Filing Fees:	\$ 200.00
Pre-hearing Conference Fees:	\$ 300.00 (1 session x \$300)
Hearing Session Fees:	\$1500.00 (2 sessions x \$750)
 Total Fees	 \$2000.00
 Respondent paid total fees of:	 \$-0-
Respondent owes	\$2000.00
 Claimant paid total fees of:	 \$ 950.00 (\$200 filing fee; \$750 hearing session deposit)
 Claimant is due refund to be paid by Respondents:	 \$ 950.00

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

**ARBITRATION PANEL**

Cynthia L. Boyce, Esq.	-	Public Chairperson
Elizabeth A. Letzler	-	Public Panelist
Robert Bennett	-	Industry Panelist

**AFFIRMATION**

I, Robert Bennett, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signatures

Robert Bennett  
Robert Bennett

Date of Decision: November 30, 1995

RECIPIENTS:

Robert Bennett

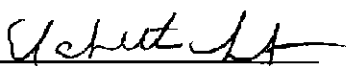
**ARBITRATION PANEL**

Cynthia L. Boyce, Esq.	-	Public Chairperson
Elizabeth A. Letzler	-	Public Panelist
Robert Bennett	-	Industry Panelist

**AFFIRMATION**

I, Elizabeth Letzler, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signatures

  
Elizabeth A. Letzler

Date of Decision: November 30, 1995

RECIPIENTS:

Elizabeth A. Letzler

ARBITRATION PANEL

Cynthia L. Boyce, Esq.	-	Public Chairperson
Elizabeth A. Letzler	-	Public Panelist
Robert Bennett	-	Industry Panelist

AFFIRMATION

I, Cynthia L. Boyce, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signatures

Cynthia L. Boyce  
Cynthia L. Boyce, Esq.

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Date of Decision: November 30, 1995

RECIPIENTS:

Cynthia L. Boyce, Esq.