

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William and Carolyn Koenig

95-00694

Name of Respondents

Prudential Securities, Inc.
Brian H. Summers

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 10, 1995, Claimants William and Carolyn Koenig ("Claimants"), through their counsel, James J. Eccleston, Esq., alleged that Respondents Prudential Securities, Inc. ("PSI") and Brian H. Summers ("Summers"), purchased unsuitable investments for the Claimants. Claimants further alleged that Respondent PSI, through its agent Larry Sills ("Sills"), misrepresented the risks, profit and loss potential, and tax-exempt status of proposed investment in The Prudential-Bache Energy Income Partnership ("PBEIP"). Claimants contended that Respondent PSI failed in its fiduciary duty to Claimants by concealing the fact that its agent Sills had given improper and fraudulent investment advice. Claimants further contended that Respondent Summers failed in his fiduciary duty to Claimants by misrepresenting the issues involved with the Class Action and Claims Fund associated with the PBEIP. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Prudential Securities, Inc., and Brian H. Summers, through their representative and in-house counsel, Patrick Gaffney, Esq., maintained that Claimants cannot bring another claim regarding their PBEIP as they admit they have already participated in the Class Action pertaining to this investment. Respondent PSI further maintained that they are not responsible for dispensing legal advice or tax advice, and are prohibited from doing such by law. Respondent PSI contended that Claimants' relevant allegations are premised on Respondent Summers' failure to give them legal advice, and thus are baseless since Respondents cannot be liable for not doing what by law they are prohibited from doing. Respondent Summers, in a separate affidavit, further contended that he offered no advice to Claimants regarding Class Action or Claims Fund for the PBEIP, and expressly notified Claimants that he was prohibited from offering such advice. Respondents maintained that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants William and Carolyn Koenig, requested \$9,999.99 in actual damages, plus interest and costs.

Respondents Prudential Securities, Inc. and Brian Summers, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

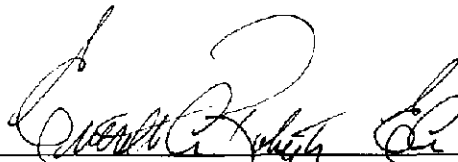
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Everett A. Roberts, EA., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants William and Carolyn Koenig, on February 1, 1995. The Respondents Prudential Securities, Inc., and Brian Summers, did not file Uniform Submission Agreements as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants William and Carolyn Koenig, against Respondents Prudential Securities, Inc., and Brian Summers, are denied in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants William and Carolyn Koenig, shall be retained by the NASD, Inc. The Respondents Prudential Securities, Inc. and Brian Summers, are jointly and severally liable and shall pay to the Claimants William and Carolyn Koenig, \$75.00 as reimbursement of one-half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **EVERETT A. ROBERTS, EA.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: January 31, 1996