

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michael and Jean Davenport

95-01160

Name of Respondents

Prudential Securities Inc.
Jeffrey Cole

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 6, 1995, Claimants Michael and Jean Davenport ("Claimants"), through their representative, Charles D. Franken, Esq., located in Plantation, FL, alleged that Respondents Prudential Securities, Inc. ("PSI") and Jeffrey Cole ("Cole"), committed breach of contract by improperly selling RJR bonds ("Bond") previously contracted for by Claimants, and purchasing RJR depository shares ("Shares"). Claimants further alleged that pursuant to Florida Statute 517.301, Respondents in connection with contested investment employed devices to defraud, made untrue or misleading statements, and engaged in practices which operated as a fraud to Claimants. Claimants contended that Respondents committed common law fraud, as a result of their actions which violated Florida Statute 517.301, in connections with the above investment. Claimants further contended that Respondents' committed breach of fiduciary duty by failing to act in accordance with Claimants' stated objectives, making unauthorized trades and engaging in conduct not beneficial and unfair to Claimants. Claimants alleged that Respondents were negligent in failing to perform up to ordinary standards of broker/representative, and in concealing facts that created unreasonable risk of harm to Claimants. Claimants further alleged that as a result of the above, they suffered a loss for which the Respondents should be held liable.

Respondents Prudential Securities, Inc. and Jeffrey Cole, through their representative and in-house counsel, Michael Arias, Esq., maintained that Claimants had full, complete and contemporaneous knowledge of contested transactions. Respondents further maintained that Claimants instigated and ratified the contested transactions, and thus any losses in Claimants' account were proximately caused by their own conduct or negligence. Respondents contended that Claimants initially discussed opening an account for their son but changed their minds. Respondents further contended that Claimants were knowledgeable investors and were informed that the Bond was a high yield and high risk investment vehicle and that the purchase of the Shares was financially sound. Respondents maintained that Claimants' claims are barred as a result of the applicability of various legal doctrines, including the doctrine of laches, statute of limitations, theory of ratification, and so-called Economic Loss Rule. Respondents further contended that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Michael and Jean Davenport, requested \$7,730.32 in actual damages, plus attorney's fees and filing fee.

Respondents Prudential Securities, Inc. and Jeffrey Cole, requested that the claims of the Claimants be dismissed in their entirety.

AWARD

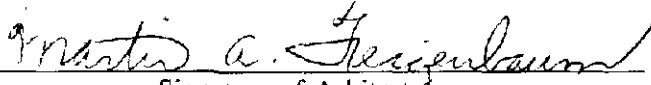
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martin A. Feigenbaum, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Michael and Jean Davenport, on February 27, 1995, and by the Respondent Prudential Securities, Inc., on April 21, 1995, and by Respondent Jeffrey Cole, on March 29, 1995.

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. Respondents Prudential Securities, Inc. and Jeffrey Cole, are jointly and severally liable and shall pay to the Claimants Michael and Jean Davenport, \$2,861.26 in actual damages.
2. Respondents Prudential Securities, Inc. and Jeffrey Cole, are jointly and severally liable and shall to the Claimants Michael and Jean Davenport, \$1,410.00 as reimbursement for attorneys' fees pursuant to Chapter 517 of the Florida Statutes.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Michael and Jean Davenport, shall be retained by the NASD, Inc. Respondents Prudential Securities, Inc. and Jeffrey Cole, are jointly and severally liable and shall pay to the Claimants Michael and Jean Davenport, \$150.00 as reimbursement for the filing fee.

AFFIRMATION

I, **MARTIN A. FEIGENBAUM, ESQ.** 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 23, 1996