

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

L. James Kennedy, Jr.

and

95-02125

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION OF PARTIES

L. James Kennedy, Jr. ("Claimant") was represented by Thomas L. Kennedy, Esq., Kennedy & Evans, L.L.C., Colorado Springs, Colorado.

Prudential Securities, Inc. ("Respondent") was represented by Charles B. LaChaussee, Esq., Prudential Securities, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 1, 1995. Submission Agreement of Claimant L. James Kennedy, Jr. was signed on May 12, 1995. Response to Motion to Dismiss was filed on or about July 24, 1995.

Statement of Answer was filed by Respondent Prudential Securities, Inc. on or about July 12, 1995. Submission Agreement of Respondent Prudential Securities, Inc. was signed on July 11, 1995 by Patricia Fitzpatrick.

HEARING INFORMATION

The hearing was held on Tuesday, April 23, 1996 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent, through its registered representative, Stanley Wolpoff, intentionally and negligently induced him to invest in Franklin Pheasant Ridge, a limited partnership,

even though it knew or should have known that the investment was not suitable for hi based upon his investment goals. It was also alleged that Respondent, through Mr. Wolpoff, misrepresented material facts about the investment in Franklin Pheasant Ridge. Claimant further alleged that Respondent failed to recommend that he diversify his investment portfolio by investing in securities other than limited partnerships.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that in 1984, when he first purchased the limited partnership, Claimant was a successful pathologist. In addition, Respondent stated that the Claimant had represented that he was financially suitable for the investment and had sufficient experience with like investments to understand the risks. Respondent asserted the following affirmative defenses: the claims asserted in this matter are ineligible for arbitration pursuant to §15 of the NASD Code of Arbitration Procedure; and the claims asserted in this matter are time-barred under applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award of general and special damages in the minimum amount of \$87,500, punitive damages, costs and expert witness fees, attorneys' fees, and such other and further relief as the Panel deems just and proper.

Respondent requested that the claims asserted against it be dismissed and that all costs, fees, travel expenses for witnesses and attorneys be assessed against the Claimant for filing a time-barred, legally impossible claim.

OTHER ISSUES CONSIDERED & DECIDED

Stanley Wolpoff was originally named as a Respondent in this matter. On or about July 19, 1995, the NASD was notified by Claimant that the claims asserted against Mr. Wolpoff were dismissed.

Respondent Prudential Securities, Inc. filed a Motion to Dismiss based upon the statute of limitations and §15 of the NASD Code of Arbitration Procedure. On or about March 29, 1996, the parties were notified of the decision of the NASD regarding the Motion to Dismiss based upon §15 of the NASD Code of Arbitration Procedure.

At the commencement of the hearing of this matter, Respondent Prudential Securities, Inc. reasserted its Motion to Dismiss and requested that the panel bifurcate the hearing. After considering the arguments of the parties, the undersigned arbitrators decided to deny the request to bifurcate the hearing and to hear the evidence presented by the parties. The parties were advised that the panel would consider the motion to dismiss after considering the evidence presented.

After considering the evidence and testimony presented at the hearing, the undersigned arbitrators decided to deny the motion to dismiss based upon the statute of limitations.

The parties have 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 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500 = \$1,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant L. James Kennedy, Jr. Respondent Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$500 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable member surcharge in the amount of \$300. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Morris J. Turkelson, Esq.

April 30, 1996

Morris J. Turkelson, Esq.

Public Arbitrator, Presiding Chair

/s/ Thaddeus J. Tecza, Ph.D.

April 30, 1996

Thaddeus J. Tecza, Ph.D.

Public Arbitrator

/s/ Roy J. Burr, Jr.

April 29, 1996

Roy J. Burr, Jr.

Industry Arbitrator