

9/22/95

**NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

© National Association of  
Securities Dealers, Inc.

Patricia Rogers, individually  
and on behalf of the Samuel M. Rogers Residual Trust,  
P.A. Rogers, Ltd. Partnership, and SAROCO, Inc.

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and

95-03059

Name of Respondent

Prudential Securities, Inc.  
Leslie Reese

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**REPRESENTATION OF PARTIES**

Patricia Rogers, individually and on behalf of the Samuel M. Rogers Residual Trust, P.A. Rogers, Ltd. Partnership, and SAROCO, Inc. ("Claimants") were represented by David B. Dyer, Esq., O'Neil & Dyer, P.C., Dallas, Texas.

Prudential Securities, Inc. ("Respondent Prudential") and Leslie Reese ("Respondent Reese") (collectively as "Respondents") were represented by John R. Loftus, Esq., Keesal, Young & Logan, Long Beach, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 23, 1995. Submission Agreement of Claimant Patricia Rogers, individually and on behalf of the Samuel M. Rogers Residual Trust, P.A. Rogers, Ltd. Partnership, and SAROCO, Inc. was signed on June 14, 1995.

Statement of Answer was filed by Respondent Prudential Securities, Inc. and Respondent Leslie Reese on or about August 2, 1995.

**HEARING INFORMATION**

The hearing was held on April 2, 1996 for two (2) sessions and April 3, 1996 for three (3) sessions in Dallas, Texas for a total of five (5) sessions.

9604228

### **CASE SUMMARY**

Claimant alleged that she began placing funds to be invested safely and to provide her a steady income for the rest of her life. Claimant alleged that these funds should have invested in safe, income producing products not in the risky portfolio comprised of one-third in a preferred stock of a very risky company, one third in a volatile government bond fund, and on third in a Prudential backed securities fund. Specifically, Claimant alleged that the concentration of her money in three risky investments was unsuitable.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the investment complained of were made with the consent and knowledge of the Claimant based upon her understanding and judgment. Respondents also stated that the investments were suitable for the Claimant in light of her stated income, net worth, investment experience, and her stated investment objectives. Respondents also asserted numerous affirmative defenses including but not limited to the following: assumption of the risk; the claims are barred by the doctrines of ratification, estoppel and waiver; and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of compensatory damages in an amount in excess of \$54,000, exemplary damages, costs, and attorneys' fees.

Respondents requested that the claims asserted against them be dismissed in its entirety and that they be awarded their costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Prudential Securities, Inc. and Leslie Reese did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to § 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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:

9604228

1. Respondents Prudential Securities, Inc. and Leslie Reese shall be and hereby are jointly and severally liable for and shall pay to the Claimants Patricia Rogers, individually and on behalf of the Samuel M. Rogers Residual Trust, P.A. Rogers, Ltd. Partnership, and SAROCO, Inc. the sum of sixty two thousand seven hundred fifty dollars (\$62,750).
2. No interest is awarded on the above stated sum.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
4. Respondents Prudential Securities, Inc. and Leslie Reese shall be and hereby are jointly and severally liable for and shall pay to the Claimants Patricia Rogers, individually and on behalf of the Samuel M. Rogers Residual Trust, P.A. Rogers, Ltd. Partnership, and SAROCO, Inc. the sum of seven hundred fifty dollars (\$750) as reimbursement of the hearing session deposit previously paid to the NASD.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were five (5) sessions x \$750 = \$3,750 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 \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Patricia Rogers, individually and on behalf of the Samuel M. Rogers Residual Trust, P.A. Rogers, Ltd. Partnership, and SAROCO, Inc. Respondents Prudential Securities, Inc. and Leslie Reese shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$3,000 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.

9604228

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by Prudential Securities, Inc. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

April 22, 1996

April 22, 1996

April 25, 1996