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NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

David R. and Christine A. Basel

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Securities Dealers, Inc.

1996

95-04674

Name of Respondents

Prudential Securities, Inc.
William H. Kost, Jr.

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REPRESENTATION

Claimants David R. and Christine A. Basel ("Claimants") were represented by William S. Burroughs, Jr., Esq., Attorney at Law, Alexandria, VA.

Respondents Prudential Securities, Inc. ("PSI") and William H. Kost, Jr. ("Kost") were represented by Gerald J. Kowalski, Vice President and Associate General Counsel of PSI, New York, NY.

CASE INFORMATION

The Statement of Claim was filed on October 2, 1995.

Claimant's Submission Agreement was signed on September 15, 1995.

A Joint Statement of Answer was filed by Respondents PSI and Kost (collectively referred to as "Respondents") on January 19, 1996.

PSI's Submission Agreement was signed on November 13, 1995.

Kost did not file an executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:

July 18, 1996 - 2 sessions

Hearing Location:

NASD, Inc. Executive Offices in Washington, DC

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CASE SUMMARY

Claimants stated that Kost was their broker when they were customers of another brokerage firm, and that when Kost took employment with PSI, he solicited Claimants to transfer their account to PSI and they did so. Claimants alleged, among other things, that they advised Kost that their primary investment objective was preservation of principal so that they would have funds available to pay for their children's education.

Claimants alleged that they were unsophisticated investors who relied on Kost for investment advice. Claimants alleged that in September 1993, Kost recommended that Claimant sell some of their bond holdings. Claimants alleged that Kost recommended that Claimants use the proceeds from that liquidation to purchase Nuveen Premium Income Municipal Fund 6 ("Nuveen 6") as Nuveen 6 met their investment objective of preservation of principal and had stable earnings. Claimants alleged that they invested the \$95,164.00 in Nuveen 6. Claimants alleged that shortly after their purchase the market value of Nuveen 6 declined significantly. Claimants alleged that when they expressed their concerns, Kost continually advised them that Nuveen 6 was suitable.

Claimants alleged that Nuveen 6 continued to decline and as a result of the decline, they sold approximately half of their holdings for an amount of \$33,420.00. Claimants sold almost all the remainder of their holdings approximately 6 months later for an amount of \$32,575.00. Claimants alleged that they realized a loss of \$28,919 in Nuveen 6. Claimants alleged that Kost failed to disclose material information including the volatility of Nuveen 6. Claimants alleged that Nuveen 6's volatility was a completely contradictory to their investment objective.

Claimants alleged that Kost failed to provide them with the Nuveen 6 prospectus until after the subject purchase despite having been instructed to do so before any transactions. Claimants alleged that without the necessary prospectus, they relied solely on Kost's expertise. Claimants alleged that both Respondents breached their fiduciary duties to them. Claimants further alleged that PSI failed to supervise Kost. Claimants alleged that Respondents' conduct constituted violation of federal securities law and Virginia statutory and common law, breach of contract and fraud.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained, among other things, that the fact that Claimants omitted in their pleading their \$2,050.91 cash dividends from Nuveen 6 makes their credibility suspect. Respondents maintained that neither Virginia statutes nor common law was applicable to this proceeding since the choice-of-law provision in the account agreement between Claimant and PSI indicated that the contract was to be governed by the laws of the State of New York.

Respondents maintained that Claimants' account was properly handled and that all material information regarding Nuveen 6 was disclosed and that Nuveen was consistent with Claimants' investment objectives. Respondents maintained that Nuveen 6 was a suitable investment. Respondents maintained that Claimants failed to follow Kost's investment advice as Kost advised Claimants that Nuveen was a long term investment to be held between 5 - 7 years. Respondents maintained that Kost also recommended that Claimants reinvest their dividends, but that Claimants did not follow his investment advice. Respondents maintained that the decline in Nuveen 6 was due to market conditions outside their control.

Respondents maintained that Kost had a reasonable basis for recommending Nuveen 6 to Claimants in light of their disclosed objectives and investment background. Respondents maintained that they should not be held accountable for a shift in interest rate and a decline in market value especially since Claimants' account was handled properly and in accordance with the "Know Your Customer Rule" of the New York Stock Exchange and the "Suitability Rule" of the National Association of Securities

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Dealers, Inc. Respondents asserted a counterclaim for frivolous litigation and requested all related costs in defending this action.

RELIEF REQUESTED

Claimants requested an award of \$26,950.00, plus interest, reimbursement of attorney's fees and costs incurred by this proceeding.

Respondents requested an award for all costs in defending this claim and that Claimants' case be dismissed in its entirety. Respondents requested the Panel direct that this claim be expunged from Kost's record.

OTHER ISSUES CONSIDERED & DECIDED

Although Kost did not execute a submission agreement, the Panel pursuant to Rule 10301(a) exercised its jurisdiction over Kost, and he is bound by the rulings and determinations that follow.

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 originals remain on file with the NASD.

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. That Claimants' claim be dismissed in its entirety.
2. That Respondents' counterclaim is denied in its entirety.
3. That the Panel directs that Claimants' complaint on Kost's record with NASD Regulation, Inc. be expunged.
4. Each party is responsible for their respective costs, including attorneys' fees except as forum fees are specifically addressed below.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following forum fees are assessed

2 sessions x \$400 = \$800

Forum fees are assessed equally between the Claimants and Respondents. Claimants are assessed forum fees in the amount of \$400; however, Claimants are entitled to offset this amount with their hearing session deposit of \$400 so that the nothing is owed from Claimants. Respondent PSI and Kost are jointly

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and severally assessed forum fees of \$400.

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


Date

Concurring Arbitrators' Signatures

Edward M. Statland, Esq., Presiding
Public Arbitrator

Lois C. Hochhauser, Esq.
Public Arbitrator

9/3/96


Jeffrey W. Helms, CFA
Industry Arbitrator

Date Award Served by the NASD Regulation: August 30, 1996

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and severally assessed forum fees of \$400.

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

Date	Concurring Arbitrators' Signatures
_____	_____ Edward M. Statland, Esq., Presiding Public Arbitrator
_____	_____ <i>Lois Hochhauser</i> Lois C. Hochhauser, Esq. Public Arbitrator
_____	_____ Jeffrey W. Helms, CFA Industry Arbitrator

Date Award Served by the NASD Regulation August 30, 1996

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and severally assessed forum fees of \$400.

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

Date

8-30-96

Concurring Arbitrators' Signatures



Edward M. Statland, Esq., Presiding
Public Arbitrator

Lois C. Hochhauser, Esq.
Public Arbitrator

Jeffrey W. Helms, CFA
Industry Arbitrator

Date Award Served by the NASD Regulation:

August 30, 1996