

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

R.T. & Barbara B. Musselwhite
R.T. Musselwhite Trust
Barbara B. Musselwhite Trust
Barbara B. Musselwhite

95-04820

Name of Respondents

Prudential Securities Inc.
Herman Jaehne

REPRESENTATION

For Claimants, R.T. & Barbara B. Musselwhite, R.T. Musselwhite Trust, Barbara B. Musselwhite Trust, and Barbara B. Musselwhite ("Musselwhite"): Jules L. Federman of Investors Rights Association, Santa Barbara, California.

For Respondent, Prudential Securities, Inc. ("Prudential"): Brian D. Elias, Esq. of the law firm of Fowler, White, Burnett, Hurley, Banick & Strickroot, Miami, Florida.

The Respondent Herman Jaehne ("Jaehne"), of Venice, Florida appeared pro se.

CASE INFORMATION

Statement of Claim filed: October 12, 1995.

Claimants' Submission Agreement signed on: September 14, 1995.

Statement of Answer filed by Respondent, Prudential on: December 18, 1995.

Statement of Answer filed by Respondent, Jaehne on: February 12, 1996.

Respondent, Prudential's, Submission Agreement signed on: December 19, 1995.

Respondent, Jaehne, did not execute a Submission Agreement as required by Section 10314, (formerly Section 25) of the Code of Arbitration Procedure. (See "Other Issues")

HEARING INFORMATION

On September 12, 1996 in Fort Lauderdale, Florida, one hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimants alleged that they executed a General Release in favor of Respondents on June, 1993 as a result of undue influence caused by Respondent Herman Jaehne and by Respondent Prudential's misrepresentation of the value of the investment. Claimants alleged that Respondents violated Sections 1, 2, 15, 18 and 27 of Article III of the National Association of Securities Dealers, Rules of Fair Practice, and as such, breached their contract with Claimants. Claimants hold Prudential liable for their registered representative, Respondent Jaehne and alleged that Prudential had the duty, obligation and responsibility to train, supervise and control all of its registered representatives and as such, any representations made by a registered representative is imputed to Prudential and, in that regard, the Claimants alleged that Mr. Jaehne provided them with poor advice in connection with the execution of the General Release. More specifically, the Claimants alleged that Mr. Jaehne gave legal advice to Mr. Musselwhite and exceeded his capacity as a stockbroker; Mr. Jaehne was more concerned with his own individual welfare than that of the Claimants and did not inform the Claimants of that fact; Mr. Jaehne could have informed the Claimants to go and seek legal opinion elsewhere, but instead advised Mr. Musselwhite to do just the opposite; and, Mr. Jaehne could have informed the Claimants that they would be required to file for arbitration and that the arbitration process would be completed within 6 months to a year but he did not do so.

Respondent, Prudential, denied all allegations of wrongdoing and maintained that Claimant, R.T. Musselwhite, is an intelligent, successful businessman and a person who clearly makes his own decisions. Respondent Prudential alleged that it dealt with the Claimants' execution of the General Release in good faith and that the Release was made voluntarily and not as a result of undue influence or any other misconduct. Respondent Prudential alleged that it repeatedly encouraged claimants to consult with an attorney prior to executing the General Release, but Claimants apparently declined.

Respondent, Herman E. Jaehne, denied all allegations of wrongdoing and maintained that Claimant, R.T. Musselwhite, was never forced in any way to accept the settlement. Respondent Jaehne next alleged that the Claimants voluntarily signed a release and accepted the amount, although he acknowledged that he provided the Claimants with his opinion on the settlement offer. Jaehne denied any wrongdoing in the selling of the Limited Partnerships, and alleged that Prudential failed to disclose the true performance of these limited partnerships.

RELIEF REQUESTED

Claimants requested an award by the arbitration panel declaring the General Release of the \$49,900 settlement amount null and void so that they could pursue their claim in the expedited arbitration process, or, alternatively have the entire claim heard by the panel of arbitrators assigned to this matter.

Respondent, Prudential, requested that Claimants' claim be dismissed in all respects and that Respondent be awarded its attorney's fees.

Respondent, Jaehne, requested a dismissal of all claims against him.

OTHER ISSUES CONSIDERED & DECIDED

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.

The panel finds that Respondent Jaehne was required to sign a Submission Agreement as required by Section 10314 (formerly Section 25) of the Code of Arbitration Procedure, Respondent Jaehne being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.

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 Panel finds for the Respondents and holds that the General Release is valid and enforceable and is not null and void.
2. Respondents' request for attorney's fees is denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 10332(c) (formerly Section 43(c)) of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the amount of \$1,500.00 (two sessions X \$750.00 per session).

1. Claimants are hereby assessed the amount of \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited by the Claimants in partial satisfaction thereof, leaving a balance due to the NASD of \$750.00.
2. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

_____/s/_____
Leo H. Kerns, Esq.

Public/Chairman

_____/s/_____
Elizabeth L. Clark

Public

_____/s/_____
Ronald Cornew

Industry

Date of Decision: October 31, 1996