

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

R.J. & E.A. O'Brien

96-00601

Name of Respondents

Prudential Securities, Inc.
Robert Tiller

REPRESENTATION

For Claimants: Jeffrey P. Coleman, Esq. of the law firm of Bonner, Hogan & Coleman, P.A., Clearwater, Florida.

For Respondent Prudential Securities, Inc. ("Prudential"): Mark J. Happe, Esq. in-house counsel at Prudential Securities, Inc.

For Respondent Robert Tiller ("Tiller"): R. Michael Underwood, Esq. of the law firm of Rutledge, Ecenia, Underwood, Purnell & Hoffman, P.A. Tallahassee, FL.

CASE INFORMATION

Statement of Claim filed: February 9, 1996.

Claimants' Submission Agreement signed on: January 3, 1996.

Statement of Answer filed by Respondent Prudential Securities, Inc. on: May 9, 1996.

Statement of Answer of Respondent Robert Tiller dated: August 22, 1996.

The Respondents Prudential Securities, Inc. and Robert Tiller did not execute Submission Agreements as required pursuant to Section 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

Two hearing sessions were conducted in this matter on January 14, 1997 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that the claim involves misrepresentations by the Respondents of a mutual fund sold to them by the Respondents. Claimants next alleged that their joint account represented a significant portion of their life savings and retirement. Claimants further alleged that they succumbed to Respondents' fraudulent and/or negligent misrepresentations which induced them to part with and dissipate monies important to them; thus, the course of events, and the claim, are the direct result of the Respondents' initial and continuing misrepresentations and breach of contract. Claimants next alleged that the Respondents, through ongoing misrepresentations, continued to encourage the Claimants to hold the investments until a significant portion of their principal was eventually lost. Claimants next alleged that the investments were promoted as suitable on the basis that they were appreciating on a slow, consistent basis and, therefore, "definitely safe." Claimants alleged that the Respondent Prudential was liable under the theory of respondeat superior and further maintained they were entitled to an award of punitive damages.

Respondent Prudential maintained that the Claimants met with Robert Tiller who explained the various investments available to them and the attendant risks. Respondent Prudential next maintained the Claimants ordered, approved, participated in and ratified each and every trade in their accounts and the purchase of all securities for the Claimants' accounts were entirely suitable for the Claimants at the time they made the investments. Respondent Prudential next maintained that the Claimants received a confirmation after each transaction and monthly account statements and were certainly aware of any price fluctuations and effect on the value of their portfolio. Respondent Prudential further maintained that the losses that the Claimants sustained were the result of market forces and the Claimants were aware of the declining value of their investment, but decided to keep the investment because of the high potential return and chose to gamble on the possibility of the investment increasing in value.

Respondent Tiller maintained that he acted as a professional in his capacity as an account executive and agent of Prudential at all times throughout their relationship. Respondent Tiller next maintained that he gathered all of the facts supplied by the Claimants and sought investments that were consistent with their goals and investment objectives. Mr. Tiller maintained that he was aware that the Claimants would require day-to-day monitoring of their portfolio and that became the hallmark of his relationship with the Claimants. Respondent Tiller next maintained that had he remained the account executive for the Claimants' account, he would have advised the Claimants regarding the changing economic environment and its probable detrimental effect on their portfolio and would have recommended changes. Respondent Tiller next maintained that he always recommended securities that met his clients' investment objectives, using material that was accurate, and never used any deceptive means to secure investments. Respondent Tiller maintained that he had no way to control the actions of Prudential after his resignation and the lack of communication or inaction in his former accounts by new account executives was beyond his control.

RELIEF REQUESTED

In the Statement of Claim the Claimants requested compensatory damages of \$48,951.27 which included interest; punitive damages; costs; expenses and disbursements; the filing fee paid to the

NASD and such other relief as the arbitration panel deemed just and proper. At the hearing the Claimants requested that the arbitration panel issue an order expunging any reference to this arbitration from Respondent Robert Tiller's CRD record.

Respondent Prudential requested that the arbitrators dismiss the Claimants' claims in all respects.

Respondent Robert Tiller did not specifically delineate a relief request.

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 original(s) remain on file with the NASD.

Prior to the commencement of the first hearing session the arbitration panel was informed that the Claimants were dismissing with prejudice all claims against the Respondent Robert Tiller.

The Respondent Prudential made a motion to assert a cross-claim against the Respondent Robert Tiller which was denied by the arbitration panel.

During the second hearing session the arbitration panel was informed that the Claimants had entered into a settlement agreement with the Respondent Prudential.

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:

The arbitration panel was not asked to issue a monetary Award in this matter as they were informed that the Claimants had entered into a settlement agreement with Respondent Prudential and dismissed with prejudice all claims against Respondent Tiller as stated above. The panel was asked by the Claimants, said request being unopposed, to issue an Order expunging any reference to this arbitration from Robert Tiller's CRD record which was granted.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the parties have agreed to the assessment of forum fees in the sum of \$800.00 (2 sessions x \$400.00) as follows:

1. The NASD shall retain the \$400.00 deposit previously paid by the Claimants to the NASD in partial satisfaction thereof.
2. The Claimants shall pay to the NASD the sum of \$200.00 representing a portion of the forum fees outstanding and the Respondent Prudential shall pay to the NASD the sum of \$200.00 representing a portion of the forum fees outstanding.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/S/

Harold M. May

/S/

Matt G. Firestone

Public

/S/

Kathleen Baggett Church

Industry

Date of Decision:

2/11/97