

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Names of Claimants

Tony Lopez, individually,
The Estate of Kathleen C. Lopez, by and through its executor, Tony Lopez,
Carmen Lopez, individually, and as beneficiary of
The Estate of Kathleen C. Lopez

and

Case Number 96-00645

Names of Respondents

Prudential Securities, Inc. and
Larry Margozewitz

REPRESENTATION OF PARTIES

Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor, Tony Lopez, and Carmen Lopez, individually, and as beneficiary of The Estate of Kathleen C. Lopez ("Claimants") were represented by Daniel P. McCarthy, Esquire of McCarthy & Gilligan, P.C. located in San Antonio, Texas.

Prudential Securities, Inc. and Larry Margozewitz ("Respondents") were represented by J. Eric Toher, Esquire of Porter & Clements located in Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed by the Claimants on or about February 13, 1996. The Amended Statement of Claim was filed by the Claimants on or about May 29, 1996. The Submission Agreement of Claimant Tony Lopez was signed on February 31, 1996. The Submission Agreement of Claimant The Estate of Kathleen C. Lopez was signed on February 29, 1996 by Tony Lopez on February 29, 1996. The Submission agreement for Claimant Carmen Lopez was signed on January 25, 1996.

The joint Statement of Answer was filed by the Respondents on or about June 24, 1996. The Submission Agreement of Respondent Prudential Securities, Inc. was signed on June 24, 1996 by Donald R. Littlefield, First Vice President. The Submission Agreement of Respondent Larry Margozewitz was signed on June 21, 1996.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: -February 11, 1997 for two (2) hearing sessions; and
 -February 12, 1997 for one (1) hearing session.

The hearing location was: -Houston, Texas

CASE SUMMARY

Claimants Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor Tony Lopez, and Carmen Lopez, individually and as a beneficiary of The Estate of Kathleen C. Lopez alleged that Respondents Prudential Securities, Inc. ("Prudential") and Larry Margozewitz ("Margozewitz") breached their fiduciary duty by their conduct which constituted misrepresentation, concealment of losses, failure to supervise, recommendation of unsuitable securities transaction and the abuse of discretionary authority granted to Respondents. Following discussions with Margozewitz and based upon the representations made by Margozewitz, Claimants allegedly opened an account with Prudential on October 17, 1990 with about \$1,370,000 which was the remaining balance of a settlement from litigation of an automobile accident involving Kathleen C. Lopez, the daughter of Tony and Carmen Lopez. When Kathleen C. Lopez died on April 4, 1993, Tony Lopez was named as the Executor in her will and both Tony and Carmen Lopez were named as beneficiaries under the will. Claimants contended that they expressed to Respondents that they had no prior investment experience and had investment objectives of safety of principle and income. Claimants asserted that on or about November 1, 1990, \$500,000 of their funds was placed in a mutual market account known as Prudential Short Term Global Fund, a risky international bond fund which invested in government bonds from various countries. Claimants further asserted that Respondents continued to manage the account in a fraudulent, negligent and deceptive manner by placing Claimants' funds in various risky investment vehicles from October 17, 1990 through February 21, 1992 which resulted in realized and unrealized losses between \$90,000 and \$100,000. On or about February 21, 1994, Claimants transferred a majority of their funds to PaineWebber, Inc. because Margozewitz moved to that firm. Claimant made other specific allegations against the Respondents including, but not limited to, common law and statutory fraud, negligence and violations of the Deceptive Trade Practice Act and the Texas Securities Act.

Respondents Prudential Securities, Inc. and Larry Margozewitz denied the allegations set forth in the Statement of Claim and Amended Statement of Claim. Respondents specifically stated that from October of 1990 until October of 1994 Claimants earned a substantial profit of \$237,553.96 in their three accounts at Prudential and their most profitable investment was \$75,155.79 from the Prudential Short Term Global Fund, the only investment about which any specific complaint was made. Respondents maintained that the Prudential Global Income Fund was both a suitable and profitable investment for the Claimants and that their recommendations were at all times proper and prudent. According to the Respondents, Margozewitz explained the relative merits and risks of investing in the Prudential Short Term Global Fund and provided Claimants with a prospectus which described the risks and objectives. Respondents contended that the Prudential Short Term Global Fund was suitable for Claimants since it was designed to provide them with what they sought which was a high income stream with minimal risk to principal. Between November of 1990 and October of 1994, Claimants allegedly earned a \$75,155.79 net profit on their investment in the Prudential Short Term Global Fund which consisted of \$144,358.45 in dividends and \$69,202.66 in realized losses due to decreased share value. Respondents further contended that in January of 1991 Margozewitz suggested to Claimants to diversify the accounts by moving some money out of the Prudential Short Term Global Fund yet Claimants felt that the share price would rebound and rejected the recommendation. As alleged, Margozewitz made the same or similar suggestions on numerous occasions to Claimants and on each occasion Claimant either ignored or rejected the advice. Respondents asserted many affirmative defenses including, but not limited to, failure to state a claim under the Texas Deceptive Trade Practices Act and under Section 27.01 of the Texas Business and Commerce Code, failure to exercise due diligence in making their decision to enter into the transaction(s), failure to timely object to or make any statement of dissatisfaction or complaint regarding the transaction(s), failure to mitigate damages, ratification, the claims were barred by the applicable statutes of limitation, and the doctrine of laches.

RELIEF REQUESTED

Claimants Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor Tony Lopez, and Carmen Lopez, individually and as a beneficiary of The Estate of Kathleen C. Lopez requested an award in the amount between \$90,000 and \$100,000 in compensatory damages; an award in an amount of several thousands of dollars for exemplary damages; and an award interest, attorneys' fees and costs.

Respondents Prudential Securities, Inc. and Larry Margozewitz requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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 Statement of Claim and Amended Statement of Claim submitted by Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor Tony Lopez, and Carmen Lopez, individually and as a beneficiary of The Estate of Kathleen C. Lopez against Prudential Securities, Inc. and Larry Margozewitz are hereby denied in their entirety and dismissed with prejudice;
2. The parties shall bear their own costs including attorneys' fees except for forum fees specifically addressed below; and
3. Any request for relief not specifically granted herein are hereby denied in its entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There were three (3) sessions x \$750 = \$2,250 in forum fees. Pursuant to Section 10332(b) of the Code of Arbitration Procedure (the "Code"), 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 Section 10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") shall retain the non-refundable claim filing fee of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. by Claimants Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor Tony Lopez, and Carmen Lopez, individually and as a beneficiary of The Estate of Kathleen C. Lopez.

In accordance with Section 10332(c) of the Code, Claimants Tony Lopez, individually, The Estate of Kathleen C. Lopez, by and through its executor Tony Lopez, and Carmen Lopez, individually and as a beneficiary of The Estate of Kathleen C. Lopez are hereby jointly and severally liable for and shall pay to the NASD Regulation, Inc. the sum of \$1,500 in additional forum fees.

Pursuant to Section 10333 of the Code, Respondent Prudential Securities, Inc. is hereby liable for and shall pay to the NASD Regulation, Inc. the sum of \$350 for the member surcharge.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

Raymond C. Kerr, Esquire
Raymond C. Kerr, Esquire
Public Arbitrator, Presiding Chair

March 6, 1997

Kathryn Ann McCoach
Kathryn Ann McCoach
Public Arbitrator

March 7, 1997

Mary Ann Tunick
Mary Ann Tunick
Industry Arbitrator

March 6, 1997

Date served by the NASD Regulation, Inc.: March 11, 1997