

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Benjamin and Mary Oswalt Trust

96-00687

Name of Respondents

Prudential Securities Incorporated;
William E. Laheta

REPRESENTATION

For Claimants: The Benjamin and Mary Oswalt Trust ("Oswalt") was represented by James J. Eccleston, Esq. of Uscian & Eccleston, located in Chicago, Illinois.

For Respondents: Prudential Securities Incorporated ("Prudential") and William E. Laheta ("Laheta") were represented by Patrick Gaffney, Esq. of Prudential Securities Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed: February 15, 1996.

Claimant's Submission Agreement signed on: March 20, 1996 by Benjamin and Mary Oswalt.

First Amended Statement of Claim filed: May 1, 1996.

Statement of Answer filed by Respondents Prudential and Laheta on: June 24, 1996.

Respondent Prudential's Submission Agreement signed on: December 2, 1996 by Patrick Gaffney, Vice-President, Prudential Securities Incorporated.

Respondent Laheta's Submission Agreement signed on: November 22, 1996.

HEARING INFORMATION

Pre-Hearing Conference: April 7, 1997 before One (1) arbitrator.

Hearing Dates/Sessions: April 23, 1997 for Two (2) sessions; and
April 24, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondent Laheta, while employed by or acting as an agent for Respondent Prudential, fraudulently sold the Oswalts unsuitable investment funds. As alleged in the claim, the Oswalts

transferred their existing conservative portfolio to Prudential in September 1992, executing an account agreement listing their account objectives as safety of principal, income, and long-term growth. Respondents began to systematically sell off the Oswalts' conservative holdings and purchased high-risk securities to replace them. In addition, the Claimants were not provided with a prospectus detailing the risk of each investment. Based upon these allegations, the Oswalts asserted claims for violation of the Illinois Securities Act of 1953; breach of trust; fraud; breach of fiduciary duty; negligent misrepresentation; respondeat superior; and failure to supervise.

Respondents denied the material allegations of the Claim, asserting that all the complained of transactions were both authorized and consistent with Claimants' indicated investment objectives of income, long-term growth and safety of principal. In addition, Respondents alleged that the calculated losses failed to account for the thousands of dollars claimants withdrew from the account by check.

RELIEF REQUESTED

Claimants requested entry of an award for compensatory damages in the sum of \$49,157.00; pre-judgment interest at the rate of 10% per annum; punitive damages of at least \$50,000.00; reasonable attorneys' fees and expenses; costs; post-judgment interest at the rate of 9% per annum; and any further relief as was just and appropriate.

Respondents requested that the Statement of Claim be denied with prejudice.

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.

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 claims asserted by Claimant Benjamin and Mary Oswalt Trust are hereby dismissed with prejudice and denied in the entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$300.00 member surcharge paid by Respondent Prudential Securities Incorporated pursuant to Section 10333 of the Code of Arbitration

Procedure.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference x \$300.00 = \$300.00; Four (4) hearing sessions x \$500.00 per session = \$2,000.00; Total forum fees = \$2,300.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain Claimant's \$150.00 claim filing fee and shall retain the \$500.00 hearing session deposit previously paid by Claimant as forum fees. Claimant Benjamin and Mary Oswalt Trust is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$266.66 as additional forum fees. Respondent Prudential Securities Incorporated is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$766.66 as forum fees. Respondent William Laheta is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$766.66 as forum fees.

Concurring Arbitrators' Signatures

Name

Date:

/s/ Colleen Grace, Esq.
Colleen Grace, Esq.
Public Arbitrator
Chairperson

June 26, 1997

/s/ Howard J. Swibel, Esq.
Howard J. Swibel, Esq.
Public Arbitrator

June 11, 1997

/s/ Robert E. Waite
Robert E. Waite
Industry Arbitrator

June 12, 1997