

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Peter P. and Mary D. Eodice

96-00723

Name of Respondent

Prudential Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 20, 1996, Claimants Peter P. and Mary D. Eodice ("Claimants"), who appeared Pro Se, alleged that Respondent Prudential Securities, Inc. ("Respondent"), through its agent, Mr. John McEvoy, provided Claimants with unsuitable investment advice when he aggressively recommended American International Petroleum ("AIPN"), a high risk investment stock. Claimants further alleged that since his retirement in 1990, Respondent's agent was aware of Claimants conservative investment strategy because the funds used for the stock purchases came from a "lump sum payment". Claimants asserted that Respondent's agent misrepresented the risks associated with the purchase of the AIPN stock. Claimants further asserted that Respondent's agent misrepresented the business relationship between Respondent and Mr. Maxwell of C.J. Lawrence, as well as inferred that Respondent backed Mr. Maxwell's comments and recommendations with in-house analysis about the stock. Claimants contended that Respondent's agent failed to recommend to sell the stock after the total purchase price of the stock declined from over \$16,000.00 to approximately \$200.00. Claimants further contended that Respondent failed to provide proper counseling in this matter and as a result of the above, they suffered a loss for which the Respondent should be held liable.

Respondent Prudential Securities, Inc., through its representative and in-house counsel, Mary La Manna Ulrich, Esq., maintained that when Claimants' account was taken over by Mr. McEvoy, Claimants represented to him that their investment objective was to continue investing in growth stocks. Respondent further maintained that AIPN met with Claimants stated objectives and desire in 1991 to purchase a low price oil stock and was consistent with Claimants previous investments in their account. Respondent contended that no misrepresentations were made concerning AIPN stock purchase because when Respondent's agent recommended AIPN to Claimants upon their request for a low price oil stock, he stated that AIPN was a speculative security and discussed the opinions of respected oil analysts. Respondent further contended that its agent, Mr. McEvoy had reason to believe that Claimants were aware of the risks involved in oil investments since they had made several purchases over a two year period. Respondent also contended that it had no employment history or affiliation with Mr. Maxwell rather, Mr. Maxwell was employed by C.J. Lawrence which is evidenced by the letterhead Mr. Maxwell used as well as stated

in his biography. Respondent maintained that Claimant failed to establish the elements necessary to prove misrepresentation because they were alerted to the speculative nature of the stock when the price declined. Respondent further maintained that Claimants failed to mitigate their losses because when the price of AIPN declined, Claimants continued to purchase more shares rather than sell their existing 3,000 shares. Respondent further maintained that Claimants' own investment decisions were a proximate cause of their losses which could have been limited to \$1,831.50, if Claimants would have sold AIPN at the time the price was declining. Respondent also maintained as a result of the above, it should not be held liable.

In a Response to the Answer of Respondent Prudential, Claimants reasserted that Mr. Mc Evoy never called AIPN a speculative stock, because, had he done so, Claimants would not have used their retirement payment for these purchases. Claimants further refuted Respondent's contention that the risks associated with the purchase of a stock correlated with the price of the stock. Claimants further asserted that they would have never purchased additional AIPN stock, after the price declined, without Mr. Mc Evoy's recommendation. Claimants alleged that the fact that Mr. Mc Evoy was providing C.J. Lawrence reports to his clients indeed indicated that Prudential hired C.J. Lawrence as a consulting firm. Claimants further alleged that Respondent failed to address some of the comments alleged in the Statement of Claim.

RELIEF REQUESTED

Claimants Peter P. and Mary D. Eodice, requested \$10,000.00 in actual damages.

Respondent Prudential Securities, Inc., requested that the claims of the Claimants be dismissed.

AWARD

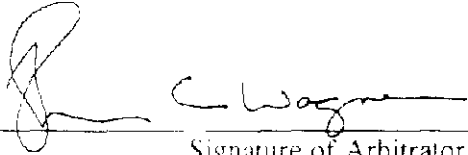
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas C. Wagner, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Peter P. and Mary D. Eodice on February 13, 1996, and by the Respondent Prudential Securities, Inc., on April 22, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Prudential Securities Inc. is liable and shall pay to the Claimants Peter P. and Mary D. Eodice \$8112.60 in actual damages, inclusive of interest.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Prudential Securities Inc. is liable and shall pay to the Claimants \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **Thomas C. Wagner**, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:

July 16, 1996