

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

C. Curtis Carter, and
Jo An B. Carter,
Claimants,

v.

No. 96-00946

Prudential Securities, Inc., and
Roger D. Wood,
Respondents.

REPRESENTATION OF PARTIES

C. Curtis Carter appeared on behalf of Claimants C. Curtis Carter and Jo An B. Carter ("Claimants").

Respondents Prudential Securities, Inc. ("PSI") and Roger D. Wood ("Wood") (hereafter jointly referred to as "Respondents") were represented by Robert S. Getman, Esq. of Prudential Securities, Inc., New York, New York.

CASE INFORMATION

Claimants statement of Claim was filed on or about February 21, 1996. claimants' Submission Agreement was signed on April 30, 1996.

Respondents' Answer was filed on or about June 18, 1996. PSI's Submission Agreement was signed on September 25, 1996. The NASD Regulation, Inc. Office of Dispute Resolution does not have a record of Wood having filed a Submission Agreement.

HEARING INFORMATION

The hearing was held on January 9, 1997 for two (2) sessions. The hearing was held in Scottsdale, Arizona.

CASE SUMMARY

Claimants alleged that: They placed with Wood for the purpose of investing at the highest rate of return possible, but with the specific instructions that Wood was not to put the original investment of \$60,017 at risk; he \$60,017 was placed in a high yield investment for a term of five (5) years with penalty for early withdrawal; by December of 1990 the original investment had dropped in value to approximately \$36,000; at all times, when claimants inquired as to the drop in value of their original investment, they were assured by Wood there was nothing to worry about, it would come back to

its original value, and that the decline in value was only temporary; Claimants trusted Wood; Wood knew that Claimants did not want to put the original investment at risk, yet contrary to their wishes, desires, and explicit instructions, he placed Claimants' money at risk as is evidenced by claimants' \$15,912 loss; Wood fell below the standard as an investment broker by investing in a high risk investment, contrary to the wishes and instructions of the client, and failed to correct the matter during the course of the six (6) year investment, even though Claimants voiced their concern on numerous occasions of the decline in value of their original investment; Wood was negligent in the investing of their funds and his negligence was the proximate cause of Claimants' \$15,912 loss; and PSI was negligent, and is liable for their loss because Wood was an employee and/or agent of PSI, and they failed to adequately train and supervise the actions and accounts of Wood.

Unless otherwise admitted in their Answer, Respondents denied the allegations in the statement of Claim. Respondents also asserted the following affirmative defenses: Claimants' accounts were handled properly and in accordance with the "Know Your Customer" Rule of the New York Stock Exchange, Inc. and the "Suitability Rule" of the National Association of Securities dealers as well as with other applicable rules and regulations; there is no private right of action allowing damage awards for violations of NASD Rules; Claimants ratified or acquiesced in the contested trades, and waived, or are estopped from making claims concerning them; Claimants failed to mitigate their damages; Claimants' accounts weren't invested in contradiction to their investment aims; any losses sustained by Claimants are attributable to market conditions and to their own investment decisions, and any action or inaction on PSI's part was not the proximate cause of any losses; at all material times and in all material matters, Respondents acted in good faith, with no intent to deceive or act recklessly with respect to Claimants; Respondents did not conspire or scheme to defraud Claimants, or aid and abet any other persons to make any untrue statement of material fact, employ any device, scheme or artifice to defraud or engage in any deception, manipulation, act, practice or course of business which operated as a fraud in connection with the transactions alleged in the statement of claim; Claimant's claims are barred by their contributory negligence in connection with the investments; Claimants' claims are time-barred by the statutes of limitations and the doctrines of laches, waiver, and estoppel; claimants agreed, in several customer agreements, that they would have no claim for any error or omission or other claim unless they promptly notified PSI in writing of any complaint, which they did not do; Claimants failed to state a claim upon which relief can be granted.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested an award of the sum of \$15,912 plus interest thereon from and after April of 1994, and for all costs and fees incurred herein.

In their answer, respondents requested that the claims herein be dismissed entirely and that costs and fees be awarded in their favor on this frivolous claim.

OTHER ISSUES CONSIDERED & DECIDED

In their Answer, Respondents also raised a Motion to Dismiss based upon an Order from the Superior Court of Arizona, Maricopa County, requiring the dispute between the parties, originally filed with the Court, to be arbitrated consistent with the rules of the New York Stock Exchange or the American Arbitration Association. At the hearing, Respondents, when questioned by the panel, stated that their interpretation of the Order required this case to be arbitrated in either the forum provided by the New York Stock Exchange, Inc. or the American Arbitration Association. However, Respondents further stated that they did not wish to raise the motion and were ready to proceed with the arbitration.

Respondent Wood did not file with the NASD Regulation Office of Dispute Resolution a properly executed Submission Agreement. Pursuant to Rule 10301 of the Code of Arbitration Procedure, Wood is required to submit to arbitration. Wood filed an Answer, and appeared and testified at the hearing in this matter. Wood is bound by the decision of the undersigned arbitrators.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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:

Claimants' claims against the Respondents are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200 previously paid by PSI.

Additional forum fees in the amount of \$400 are assessed by the panel against Claimants.

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

Dated:

J. Noland Franz
J. Noland Franz
Public Arbitrator, Presiding Chair

/s/

January 27, 1997

John V. Marian
John V. Marian
Public Arbitrator

/s/

January 27, 1997

James M. Rapisarda
James M. Rapisarda
Industry Arbitrator

/s/

January 27, 1997