

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Paul G. Giroir, Charlotte D. Giroir,  
Individually and on behalf of their minor children, Ryan Giroir,  
and Shannon Giroir, and  
A-Abal Transmissions & Differentials, Inc.

Claimants,

and

No. 96-02423

Prudential Securities, Inc., William E. Blakeman,  
Stanley T. Broussard, Individually, and in his capacity as  
General Partner of Broussard and Fontenot, Dennis Terry Fontenot,  
Individually, and in his capacity as General Partner of Broussard  
and Fontenot, and Broussard and Fontenot, G.P.,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants Paul G. Giroir ("Paul Giroir"), Charlotte D. Giroir, Ryan Giroir, Shannon Giroir, and A-Abal Transmissions & Differentials, Inc. (hereinafter collectively referred to as "Claimants") were represented by Donald W. Hebert, Esq. of Carriere & Hebert located in Opelousas, Louisiana.

Respondents Prudential Securities, Inc. ("PSI"), William E. Blakeman, Stanley T. Broussard ("Broussard"), Dennis Terry Fontenot ("Fontenot"), and Broussard and Fontenot, GP (hereinafter collectively referred to as "Respondents") were represented by John C. Anjier, Esq. and George Denegre, Jr., Esq. of Liskow & Lewis located in New Orleans, Louisiana.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 7, 1996.

Claimant Paul G. Giroir, individually and on behalf of his minor children, Ryan Giroir and Shannon Giroir, signed a Submission Agreement on June 4, 1996.

Claimant Charlotte D. Giroir, individually and on behalf of her minor children, Ryan Giroir and Shannon Giroir, signed a Submission Agreement on June 4, 1996.

Claimant A-Abal Transmissions and Differentials, Inc.'s Submission Agreement was signed on June

4, 1996 by Paul G. Giroir, President of A-Abal Transmissions and Differentials, Inc.

Respondents' Statement of Answer was filed on or about August 21, 1996.

Respondent William E. Blakeman's Submission Agreement was signed on September 20, 1996.

Respondent Stanley T. Broussard's Submission Agreement was signed on September 20, 1996.

Respondent Dennis Terry Fontenot's Submission Agreement was signed on September 23, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from Respondents Prudential Securities, Inc. and Broussard & Fontenot, GP.

Respondents' Partial Motion to Dismiss was filed on or about March 25, 1997. Claimants' Response thereto was filed on or about April 1, 1997. Respondents' Reply was filed on or about April 15, 1997.

#### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on: May 12, 1997 for two (2) sessions and May 13, 1997 for two (2) sessions.

The hearing was held in New Orleans, Louisiana.

#### **CASE SUMMARY**

Claimants contended that Respondents Broussard and Fontenot were employed as stockbrokers with Respondent PSI, and that Broussard and Fontenot, GP was comprised of the individual partners of Respondents Broussard and Fontenot. Claimants asserted that Respondent Blakeman was a branch manager for PSI who directly supervised Respondents Broussard and Fontenot, individually, and the Broussard and Fontenot, GP.

Claimants alleged that, on or about September, 1987, Claimant Paul Giroir acting through Respondent Broussard and/or Broussard and Fontenot, GP opened five securities accounts with Thomson-McKinnon Securities, Inc. ("Thomson-McKinnon"). Claimants contended that Respondent Broussard, then employed as a stockbroker for Thomson-McKinnon, was assigned the management of Claimants' accounts. Claimants asserted that, in September, 1989, Respondent PSI assumed responsibility for the management of Claimants' investment securities and that Claimants' accounts continued to be managed by Respondents Broussard and Fontenot and/or Broussard and Fontenot, GP.

Claimants alleged that Respondents were aware that Claimants' primary investment philosophy was to invest primarily in conservative investments to generate income, which investments were to have minimal or virtually no risk of loss and were to have safety of principal. Claimants represented that Claimant Paul Giroir requested that Claimants' funds be invested in "safe" securities and requested government-backed securities such as Zero-Coupon Bonds or Treasury Notes. Claimants contended that, despite Claimants' specific investment instructions that no undue risk be taken with the investment funds, Respondents failed to follow Claimants' specific investment directions and guidelines, leading to disastrous losses in the value of Claimants' investments. Claimants alleged that Respondent Broussard specifically recommended that Claimants purchase unsuitable investments including, Alliance North American Income-Class B and Alliance Global Dollar Fund-Class B. Claimants maintained that these securities were not individual bonds, but were, in fact, mutual bond funds which were comprised of high-risk securities, not guaranteed by the government, and which were subject to great instability. Claimants asserted that Respondents affirmatively acted to hide this knowledge by making false, inaccurate and misleading statements to Claimants regarding the very nature of the investment securities recommended by Respondents and purchased by Claimants.

Claimants alleged the following as the non-exclusive theories of liability: (1) breach of fiduciary duty under Louisiana Law and Federal Common Law by all Respondents; (2) Breach of NASD and NYSE rules regarding suitability and fair dealing by all Respondents; (3) principals of negligence under Louisiana Law by all Respondents; (4) principals of equity applicable to all Respondents; (5) respondent superior liability applicable to Prudential Securities, Inc.; (6) control person liability; and (7) all other theories of law and equity applied under the facts fairly alleged.

Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted that Respondents Broussard and Fontenot previously shared a broker number and pooled and divided their commissions, but there was not and is no general partnership between them. Respondents alleged that Claimant Paul Giroir was told repeatedly by Respondent Broussard the exact nature of the two mutual funds at issue, including the risks involved in investing in them. In addition, Respondents contended that Claimant Paul Giroir received a marketing wrapper and prospectus each time Respondent Broussard discussed the mutual funds with Claimant Paul Giroir that explained in detail the nature of the mutual funds, including specifically the risks involved in the investment. Respondents contended that Claimant Paul Giroir was sent another prospectus when the trades were confirmed. Respondents argued that these marketing materials and prospectuses are so clear in their explanations and descriptions of the two mutual funds at issue and the risks involved in investing in them that no one could believe that these two mutual funds were government guaranteed bonds that had absolutely no risk.

Respondents asserted the following affirmative defenses: (1) Claimants' claims were filed outside the one year prescription period pursuant to La. Civ. Code art. 3492 and should be dismissed; (2) Claimants' recovery should be barred or reduced because they failed to mitigate their damages; (3) Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably,

prudently and responsibly bar any recovery of damages; (4) to the extent the Alliance mutual funds diminished in value, such diminution is the result, in whole or in part, of unforeseen price fluctuations in the securities markets (and the economy in general) in which Claimants knowingly and willingly participated; (5) in addition to ratifying all activity in their accounts, Claimants directed and authorized the execution of all transactions in their accounts, and therefore, are estopped from bringing this action; (6) there is no causation between the alleged damages and the alleged misrepresentations; and (7) the Statement of Claim fails to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimants asserted that they are entitled to damages which are computed as the difference between the fair value of the consideration at the time Claimants paid for the securities and the fair value of the securities at the time of repayment or the fair value of the securities at the time the Claimants disposed of the two mutual funds at issue. Claimants also asserted that they are entitled to a return of a well managed portfolio, return of commissions, interest thereon from the date of payment to the date of repayment, all taxable costs, reasonable attorney fees and punitive damages. With respect to account # TCS-808882-37, Claimants alleged losses in an amount not less than \$27,626.41; With respect to account # TCS-958043-37, Claimants alleged losses in an amount not less than \$5,955.47; With respect to account # TCS-808891-37, Claimants alleged losses in an amount not less than \$13,735.45; With respect to account #TCS-026299-37 Claimants alleged damages in an amount not less than \$7,426.39; With respect to account # TCS-026302-37, Claimants alleged losses in an amount not less than \$6,973.08.

Respondents requested that the Statement of Claim be dismissed in its entirety, that this action be struck from the CRD records for Blakeman, Broussard and Fontenot, and that costs be awarded in Respondents' favor.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Prudential Securities, Inc. and Broussard and Fontenot, G.P. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondents' Partial Motion to Dismiss was denied without prejudice prior to the hearing on the merits. The outcome of this case makes it unnecessary for the panel to rule on Respondents' Motion.

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 Regulation, Inc. Office of Dispute Resolution.

Although the following does not constitute a referral of this matter to the appropriate regulatory authorities, the panel wishes that the record reflect the following:

*While there was no issue in this proceeding regarding this matter and therefore the panel did not hear pro and con evidence directly on the matter, it did appear that Prudential Securities, Inc. does not have a system in place by which Prudential's home office furnishes its branch manager with information which would quickly put such a branch manager on notice that trades have been or are being executed in an account in his office which trades are not in keeping with a customer's stated investment objectives.*

#### 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. That the Statement of Claim is hereby denied with prejudice; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

#### FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were four (4) hearing sessions  $\times$  \$500 = \$2,000 in forum fees. Pursuant to § 10332(b) of the NASD 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 § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

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Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Prudential Securities, Inc.

Pursuant to § 10332(c) of the Code, Claimants are liable for and shall pay forum fees in the amount of \$500 (1/2 total forum fees - \$500 hearing session deposit).

Pursuant to § 10332(c) of the Code, Respondents are jointly liable for and shall pay forum fees in the amount of \$1,000 (1/2 total forum fees).

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

Concurring Arbitrators' Signatures

\s\ David G. Beerbower, Esq.  
David G. Beerbower, Esq.  
Chairperson  
Public Arbitrator

May 23, 1997  
Dated:

\s\ Daniel Eugene Bivins, III  
Daniel Eugene Bivins, III  
Panelist  
Public Arbitrator

May 23, 1997  
Dated:

\s\ Robert L. Hand  
Robert L. Hand  
Panelist  
Industry Arbitrator

May 28, 1997  
Dated:

For NASD Regulation use only:  
Date Award was served on the parties: May 29, 1997