

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Delbert R. Woodin, and  
Hazel L. Woodin,

Claimants,

vs.

No. 96-02809

Prudential Securities, Inc.,  
Michael K. Self, and  
Robert Bryan,

Respondents.

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### **REPRESENTATION OF PARTIES**

Delbert R. Woodin and Hazel L. Woodin ("Claimants") were represented by Michael Salcido, Esq.,  
Phoenix, Arizona.

Prudential Securities, Inc. ("PSI"), Michael K. Self ("Self") and Robert Bryan ("Bryan")  
(collectively referred to as "Respondents") were represented by Martin Hunger, Esq., Prudential  
Securities, Inc., New York, New York.

### **CASE INFORMATION**

Claimant's filed their Statement of Claim on or about June 26, 1996, and signed their  
Submission Agreement on June 26, 1996.

Respondents filed their joint Statement of Answer on or about October 8, 1996, and signed  
their Submission Agreements on October 7, 1996, September 27, 1996, and September 20, 1996  
respectively.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was held on July 11, 1997 for one (1) session.

The Arbitration Panel held a hearing on September 24 and 25, 1997 in Scottsdale, Arizona  
for a total of four (4) sessions.

### **CASE SUMMARY**

Claimants alleged the following violations of applicable statutes, rules and regulations by the Respondents: Securities fraud in violation of ARS §44-1991; Fraud; unsuitable investment recommendations; dishonest and unethical conduct as defined in the Arizona Securities Act, AAC R14-4-130; breach of fiduciary duty; negligent supervision and/or failure to supervise; negligent misrepresentations; and negligence. Claimants' allegations arose out of transactions in the following securities: Los Angeles Calif CTFS Partn Hollywood Presbytrn Med Ctr municipal bond; Keystone Custodian Funds Series B-2 mutual fund; and Keystone Custodian Funds Series B-4 mutual fund.

Respondents generally and specifically denied each and every substantive allegation in the Statement of Claim. Respondents also asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief can be granted; Claimants, at all relevant times, had or should have had full knowledge of all material facts concerning the investments made, including the nature of the investments and the associated risks; Claimants directed and authorized the execution of all transactions in their accounts and, therefore, are estopped from bringing this action; Claimants may not recover anything against Respondents because they ratified all of the activity in their account; Respondents did not make any misrepresentations or omissions with respect to the investments made in Claimants' account; Claimants knew of any alleged untruths or omissions and are therefore barred from bringing this action; Respondents did not know, and in the exercise of reasonable care could not have known, of the alleged untruths or omissions; to the extent Claimants' investments have diminished in value, such diminution is the result, in whole or in part, of the unforeseen price fluxuations in volatile securities markets in which Claimants knowingly and willingly participated; Claimants' claims against Respondent are barred, in whole or in part, by the applicable statutes of limitation; arbitrators may not award punitive damages under the applicable law; the allegations relating to punitive damages are merely conclusory and fail to set forth sufficient facts to state a claim for recovery of such damages; the purported wrongdoing on the part of Respondents was not the proximate cause of the losses for which Claimants seek recovery; Claimants have not incurred any damages arising from the actions of Respondents; Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably, prudently and responsible bar any recovery of damages; Claimants are barred from recovery because they failed to mitigate their alleged damages; Claimants' claims fail because they have not sustained any loss or damage; Claimants' claims fail because they did not justifiably rely upon any alleged claims, misstatements, or omissions by Respondents; Claimants' accounts were not invested in contradiction to their investment objectives; and the laws of the State of Arizona are inapplicable to Claimants' claims.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of: Compensatory damages of at least \$100,000; pre and post judgment interest until the award is paid in full; opportunity and benefit of the bargain losses; disgorgment of all commissions and margin interest charged to their account; costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to ARS

Sections 12-341.01 and 44-2001; punitive damages in an amount to be determined at the hearing in this matter; and such other and further relief deemed just and proper.

Respondents requested dismissal of Claimants' claims in their entirety, and requested an award of attorneys' fees and costs incurred in connection with this matter.

### **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 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:

1. The Respondent Robert A. Bryan was not culpable or responsible for any of the eight (8) claims found on pages 11 and 12 of Claimants' Statement of Claim dated June 26, 1996.
2. The Respondents Michael K. Self and Prudential Securities Inc. breached their fiduciary duty to the Claimants (claim #5) and pressured the claimants to enter into an unsuitable investment (claim #3) contrary to the Claimants stated investment objectives. The panel awards damages to the Claimants against Prudential Securities, Inc. and Michael K. Self, jointly and severally in the amount of \$40,531.41 plus interest from the date of the award at eight percent (8%) per annum if the award is not paid in full within 30 days from the date the award is received by the Respondents (date of posting).
3. The panel assesses all forum fees against the Respondents and declares that each party shall bear its own costs and attorney fees.
4. Unless specifically set forth, all other requests/claims for relief are, and each of them, denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one pre-hearing session x \$300 and four (4) hearing sessions x \$750 = \$3,300 in forum fees. Pursuant to Rule 10332(b) of 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 Rule 10332(c) of the NASD Regulation, Inc. Code of arbitration Procedure (the "Code"), NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the 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 \$350 previously paid by PSI.

Additional forum fees in the amount of \$3,300 are assessed by the arbitrators jointly and severally against the Respondents.

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

Dated:

Eugene W. Bronski  
Eugene W. Bronski  
Public Arbitrator, Presiding Chair

/s/

November 5, 1997

Robert A. Williams, Jr.  
Robert A. Williams, Jr.  
Public Arbitrator

/s/

November 3, 1997

Douglas E. McArthur  
Douglas E. McArthur  
Industry Arbitrator

/s/

November 4, 1997