

971768

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

### **Name of Claimant**

Nina Armstrong, individually,  
Nina Armstrong, Co-executor of the Estate of MaryJane Gillig,  
James P. Gillig, Co-executor of the Estate of MaryJane Gillig,  
Estate of MaryJane Gillig

and

Arbitration No.  
96-04596

### **Name of Respondent**

Prudential Securities, Inc.  
Loren "Biz" Obley

## **REPRESENTATION OF PARTIES**

The Claimants were represented by Daniel G. Hems, Esq., Law Offices of Daniel G. Hems, San Jose, California.

Prudential Securities, Inc. was represented by Ralph Blascovich, Esq., Prudential Securities, Inc., San Francisco, California.

## **CASE INFORMATION**

The Statement of Claim was filed on or about October 10, 1996.  
The Submission Agreement for Nina Armstrong (individually) was signed on September 30, 1997.  
The Submission Agreement for James P. Gillig (individually) was signed on September 30, 1997.  
The Submission Agreement of Nina Armstrong and James P. Gillig on behalf of the MaryJane Gillig Estate was signed on December 13, 1997.  
Prudential Securities' Statement of Answer was filed on or about February 11, 1997.

## **HEARING INFORMATION**

The hearing was held on November 10, 1997 and November 11, 1997 in San Francisco, California.  
There were 4 hearing sessions.

### **CASE SUMMARY**

Claimants allege that the Respondents induced Claimants to invest in a loan by presenting the loan as an in-house product backed by the firm. Claimants allege that Respondents actions constitute breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, fraud, negligence, negligent misrepresentation, and violations of the California Corporations Code.

Prudential Securities denied the allegations set forth in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested an award which rescinded the investment and paid the Claimant \$200,000 in contractual, compensatory and consequential damages. Claimant further requested an award of \$100,000 in emotional distress, \$100,000 in punitive damages, \$25,000 in attorneys' fees and \$1,000 in costs.

Prudential Securities requested that the claims asserted against it be denied in their entirety and that it be awarded it's costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators have determined that Respondent Loren "Biz" Obley ("OBLEY") has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Obley had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

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.

### **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. Claimants' Motion for Default against Loren "Biz" Obley is not decided as it is moot.

2. The Panel specifically finds Respondent Obley was properly served with the Statement of Claim and duly notified of the hearing. The Panel finds Obley liable after a full hearing on the merits. The Claimants are awarded and Obley shall pay to Claimants the sum of \$156,250 inclusive of pre-judgement interest.
3. Each and every claim as to Prudential Securities is dismissed.
4. Claimants request for an award of punitive damages is denied.
5. All other claims are dismissed.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were 4 sessions x \$750 = \$3,000 in forum fees. Pursuant to Rule 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 Rule 10332(c) all forum fees are assessed against Obley.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 made by the Claimants. The NASD Regulation, Inc. Office of Dispute Resolution shall refund the \$750 hearing session deposit to the Claimants.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350.00.

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



Margaret Kallman, Esq.  
Public Arbitrator, Presiding Chair

Dated: 26 Nov. 1997

Michael B. Laikin, Esq.  
Public Arbitrator

Judith M. Rosenberg, Esq.  
Industry Arbitrator

Date Served: December 1, 1997

2. The Panel specifically finds Respondent Obley was properly served with the Statement of Claim and duly notified of the hearing. The Panel finds Obley liable after a full hearing on the merits. The Claimants are awarded and Obley shall pay to Claimants the sum of \$156,250 inclusive of pre-judgement interest.
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Public Arbitrator, Presiding Chair

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Michael B. Laikin, Esq.  
Public Arbitrator

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Judith M. Rosenberg, Esq.  
Industry Arbitrator

Date Served: December 1, 1997

11/29/97

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Margaret Kallman, Esq.  
Public Arbitrator, Presiding Chair

  
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Michael B. Larkin, Esq.  
Public Arbitrator

Dec. 1, 1997

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Judith M. Rosenberg, Esq.  
Industry Arbitrator

Date Served: December 1, 1997