

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Henry A. Schauer

Arbitration
No. 96-04765

Name of Respondent(s)

Prudential Securities Incorporated
George Merrill

REPRESENTATION

For Claimant: Philip J. O'Connell, Esq., Missoula, Montana

For Respondents: Peter von Maur, Esq., Prudential Securities
Incorporated, New York, New York

CASE INFORMATION

Statement of Claim filed: October 23, 1996

Claimant's Submission Agreement signed: October 22, 1996

Joint Statement of Answer filed by Respondents: January 16, 1997

Respondents' Submission Agreements signed as follows:

Prudential Securities Incorporated: January 15, 1997

George Merrill: January 15, 1997

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): September 15, 1997 (two sessions)

Hearing Location: Seattle, Washington

CASE SUMMARY

After his wife, Lois Schauer, died on July 15, 1991 in Montana, Claimant telephoned their broker, Respondent George E. Merrill, in New Jersey. Claimant told him that Lois had died and he was her sole heir, and that he wanted Respondent Merrill to put the assets in Lois' IRA under his name. Respondent Merrill asked Claimant to come to the office and bring necessary legal papers showing that he (Henry Schauer) was the sole heir.

On or about August 1, 1991, Claimant met with Respondent Merrill in the Prudential Securities, Inc. branch office in Ocean, New Jersey. At that time Claimant signed a number of forms placed before him by Respondent Merrill, to include authorization to sell (and transfer) the investments in Lois' IRA. At the time of Mrs. Schauer's death, the conservative, high yield investments and money funds in her IRA account were worth approximately \$83,000, yielding an average of 9.3% and experiencing significant growth. Respondents liquidated those IRA investments; transferred the sale proceeds from Lois' IRA into a regular account in the name of the Estate of Lois Schauer; then, with other securities she had been holding in her own name, Respondents transferred the cash and securities into Claimant's regular security account, and not to his IRA with the firm. Respondent Merrill subsequently put the funds into conservative, high yield investments yielding an average of 6.3%, some of which was tax-free income. In February, 1992 Claimant provided his Accountant with the necessary papers to prepare his federal income tax return. Claimant was soon advised for the first time that the transfer of the assets from his wife's IRA constituted a taxable event - a distribution of income in effect, and that he would need to pay approximately an additional \$35,000 in federal and state income taxes due to the IRA distribution. In order to pay these additional taxes, in May 1992 Claimant was forced to sell a number of investments in and withdraw funds from his Prudential account.

Claimant alleges that Respondents' liquidation of the investments in his wife's IRA and the transfer of the cash proceeds to his regular security account constituted a reckless disregard for the proper care and preservation of his (the client's) financial interests and retirement plans. Respondents knew or

should have known of the income tax consequences which would be triggered by the transfer of these IRA assets to Claimant's regular security account (instead of transfer to his existing IRA), and Claimant alleges that Respondents were negligent in their failure to advise him of such consequences. Respondent Merrill had extensive knowledge and understanding of Claimant's lack of investment sophistication and of his investment needs and objectives. As a direct and proximate result of Respondent Merrill's recklessness, Claimant suffered significant financial losses in the form of avoidable tax liability and loss of income from securities sold to pay that tax liability.

Respondents denied the allegations of misconduct set forth in the Statement of Claim. Respondents specifically argued that the Claimant directed Respondents to liquidate and distribute the assets from his wife's IRA account to his regular security account; that as an experienced investor Claimant fully understood the consequences of his decision to take full distribution of those assets; and that Claimant refuses to take responsibility for the financial consequences of his decisions. Also, Respondent Merrill specifically advised Claimant that he should seek professional assistance and advice concerning his wife's estate matters, and Respondent Prudential Securities, Inc.'s policy is that their brokers shall not give any tax advice to their clients.

RELIEF REQUESTED

Claimant requested an award of \$158,979.00, to compensate him for his total damages.

Respondents requested that Claimant's claims be dismissed in their entirety and that costs be awarded in Respondents' favor.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with NASD Regulation, Inc. (NASDR).

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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$75,000.00

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

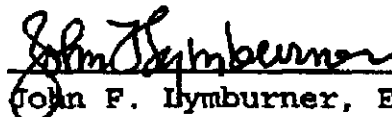
Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall refund the \$750.00 hearing session deposit previously deposited by Claimant. Forum fees are assessed against Respondent Prudential Securities Incorporated in the amount of \$1,500.00, calculated as follows: Two hearing sessions times \$750.00.

Fees are payable to NASD-Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
John F. Lymburner, Esq.	Public Arbitrator
Joseph L. Crowe, Jr.	Public Arbitrator
James A. Bishop	Industry Arbitrator

Concurring Arbitrators' Signatures


John F. Lymburner, Esq.

Joseph L. Crowe, Jr.

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Date of Decision: _____

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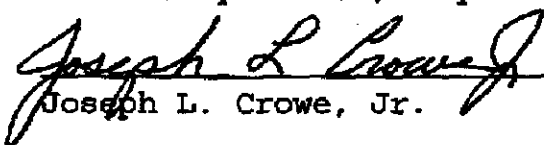
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