

DR

PACIFIC EXCHANGE, INC.  
301 Pine Street  
San Francisco, California 94104

In the matter of the Arbitration between:

JEAN ALBURY, an individual and as  
Trustee of the Jean Albury Family Trust,

Claimant,

vs

PRUDENTIAL SECURITIES, INC.,

Respondent

PCX Case No. 96-L054

DECISION OF THE PANEL

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant Jean Albury ("Claimant" or "Albury") on July 26, 1996, the Amended Claim on February 27, 1998, and the Answer of Respondent Prudential Securities, Inc. ("Respondent" or "Prudential"); having considered all testimony given on May 31, 2000, at Atlanta, Georgia, lasting 2 hearing sessions, and, having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: John J. Miller, Esq.,  
*Law Office of John J. Miller - Overland Park, KS*

Of Respondents: Barry J. Armstrong, Esq. and Terry R. Weiss, Esq.  
*Long, Aldridge & Norman - Atlanta, GA*

SUMMARY OF CASE

Claimant, individually and as trustee of the Jean Albury Family Trust, was a retail customer of Respondent Prudential between 1987 and 1992. Albury alleges, among other claims, that Prudential engaged in widespread fraudulent trading activities, primarily in connection with certain high-risk limited partnership and junk bond investments it offered to its customers. Albury seeks damages of \$131,687.00, plus pre-judgment interest for her trading losses, a refund of commissions and fees paid in connection with the challenged investments, punitive damages, attorney's fees and costs.

## **STATEMENT OF FACTS**

### **Claimant's Perspective**

Albury, a widow, opened a customer account with Prudential in March 1987 (the "Account") with an initial deposit of \$285,000. In the years following, Albury invested a total of \$433,000 through the Account. Prudential, through its agent and Albury's broker, Dean Poole, advised Albury to put approximately \$178,000.00 of the funds in the Account into various speculative, high-risk limited partnerships, including the Prudential Bache Energy Income investments, the Polaris Aircraft Income investments and various junk bond investments. Claimant alleges that Prudential, through Poole, made unauthorized trades and made investments on margin without authorization. Claimant asserts that the trades conducted in the Account were fraudulent and unsuitable investments for her given her lack of sophistication in securities investing.

### **Respondent's Perspective**

Respondent denies that it or Poole engaged in any wrongful conduct in relation to the Account and denies that the investments were unsuitable for Albury. Prudential alleges that, based on the available research, it was justified in marketing the Prudential Bache Energy Income funds presented to Albury as high-return investments. It claims that its research into the viability of these limited partnership funds was supported by independent consultants and investment rating services. It denies that it or Poole misrepresented the speculative nature of the limited partnerships or that it characterized them as low-risk investments. Prudential further claims that a prospectus provided Albury for the Polaris Aircraft Income limited partnership, which Poole also recommended to her, clearly states that there was no guarantee given that the investment would return capital or earnings. Prudential denies also that it misrepresented the past performance record of either the Prudential Bache Energy Income or Polaris Aircraft Income funds.

## **PRE-HEARING PROCEDURES**

Prudential filed a pre-hearing motion to dismiss all claims made in Claimant's Amended Statement of Claim concerning non-partnership investments. The motion was granted by the Panel under PCX Rule 12.4, "Time Limitation Upon Submission" as having been based on occurrences or events that took place more than six years before the arbitration was filed. A motion to dismiss all other claims under Rule 12.4 was made by Respondent at the hearing and was denied.

## **ISSUES FOR RESOLUTION**

1. Were the investments made by Prudential on behalf of Albury, suitable given her level of sophistication and stated investment goals?
2. Did Prudential misrepresent the level of risk, the speculative nature, or the performance history of the investments made on behalf of Albury?

## **RELIEF REQUESTED**

### **BY CLAIMANT:**

Claimant requests:

1. \$131,687.00 in trading losses;

- 2 prejudgment interest,
- 3 refund of all commissions and fees paid;
- 4 punitive damages;
- 5 attorneys' fee and costs

**BY RESPONDENT**

Respondent requests that Claimant's claims be denied in their entirety and that Claimant be ordered to pay all forum costs

**DECISION**

The arbitration panel, after considering all evidence and testimony presented, find that Respondent misrepresented the level of risk and performance history and reject Respondent's total return method of calculating damages. The panel finds for the Claimant and against the Respondent and awards the following:

- 1 Claimant is awarded forty-one thousand, one hundred dollars (\$41,100.00) in compensatory damages against Respondent, which amount includes pre-judgment interest;
- 2 Respondent will reimburse Claimant's attorneys' fees in the amount of six thousand dollars (\$6,000.00);
- 3 Claimant shall pay forum fees to Pacific Exchange, Inc. in the amount of three hundred dollars (\$300);
- 4 Respondent will pay to Pacific Exchange, Inc. forum fees in the total amount of two thousand six hundred dollars (\$2,600.00);
5. The parties will bear their own costs of arbitration.

Date: 8/8/2000

Daniel E. Gulden  
Daniel Gulden, Chair

Date: 8/9/2000

George Loughery  
George Loughery

Date: 8/10/00

Chesley M. Morton  
Chesley Morton