

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Bennett Weiss IRA
Bennett Weiss SEP IRA
Denise Weiss IRA
Denise Weiss SEP IRA

Case Number: 21-01879

vs.

Respondent

Pruco Securities, LLC.

Hearing Site: New York, New York

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Bennett Weiss IRA, Bennett Weiss SEP IRA, Denise Weiss IRA, and Denise Weiss SEP IRA: Michael S. Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondent Pruco Securities, LLC.: Andrew S. Azarmi, Esq. and Anne Waddell, Esq., Dentons US LLP, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: July 22, 2021.

Bennett Weiss IRA signed the Submission Agreement: July 22, 2021.

Bennett Weiss SEP IRA signed the Submission Agreement: July 22, 2021.

Denise Weiss IRA signed the Submission Agreement: July 22, 2021.

Denise Weiss SEP IRA signed the Submission Agreement: July 22, 2021.

Statement of Answer filed by Respondent on or about: September 27, 2021.

Pruco Securities, LLC. signed the Submission Agreement: September 27, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence; gross negligence; misrepresentation; omission of a material fact; failure to supervise; breach of fiduciary duty; and breach of contract. The causes of action relate to Variable Annuity investments.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages of approximately \$300,000.00; statutory damages pursuant to state laws: lost opportunity damages and accrued statutory interest; costs; filing and hearing fees; and other remedies the Panel deems proper and appropriate.

In the Statement of Answer, Respondent requested: dismissal of this arbitration under FINRA Rule 12206(a); dismissal with prejudice of all of Claimants' claims; costs and expenses; imposition against Claimants of the entirety of the forum fees; and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On November 23, 2021, Respondent Pruco Securities, LLC filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On January 2, 2022, Claimants filed a Response opposing the Motion to Dismiss. On January 27, 2022, Respondent filed a Reply in Support of its Motion to Dismiss.

On February 7, 2022, the Panel heard oral arguments on the Motion to Dismiss. On February 11, 2022, the Panel granted the Motion to Dismiss on the grounds that:

The occurrences and events giving rise to the claims took place in 2010-2011. The claims were filed in 2021 more than six-years later, and therefore must be dismissed as ineligible for FINRA arbitration under Rule 12206(a).

The Claimants alleged that they were told by their sales representative, that the annuities they bought in 2010-2011 were guaranteed to pay an annual minimum of \$60,000 after the appropriate holding periods.

The Claimants knew or should have known the guaranteed minimum annual payments from the Prudential annuities identified as exhibits A, B, C, D, and E dated December 2010, and from the quarterly statements thereafter would not pay that amount. The policies, examples and statements clearly show that the aggregate guaranteed minimum annual withdrawals at 10 years would be less than \$60,000.00.

Respondent Pruco Securities, LLC's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice pursuant to Rule 12206 of the Code.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 1,425.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Pruco Securities, LLC is assessed the following:

Member Surcharge = \$ 2,025.00
Member Process Fee = \$ 3,875.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-Hearing Conferences: November 9, 2021 1 session
February 7, 2022 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Julian F. Santos	-	Public Arbitrator, Presiding Chairperson
Barry Steven Port	-	Public Arbitrator
Brian John Gallagher	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Julian F. Santos

Julian F. Santos
Public Arbitrator, Presiding Chairperson

02/16/2022

Signature Date

Barry Steven Port

Barry Steven Port
Public Arbitrator

02/16/2022

Signature Date

Brian John Gallagher

Brian John Gallagher
Public Arbitrator

02/15/2022

Signature Date

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February 16, 2022

Date of Service (For FINRA Dispute Resolution Services use only)