

# AMERICAN ARBITRATION ASSOCIATION

## COMMERCIAL ARBITRATION TRIBUNAL AWARD OF ARBITRATORS

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In the Matter of Arbitration between

Re: 74 Y 136 01227 93  
Peter Cole Jensen, Peter Cole Jensen Inc.  
Money Purchase & Profit Sharing Trust,  
and Sidney Corrie, Jr.  
and  
Prudential Securities, Incorporated

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WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and dated August 17, 1983 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARD, as follows:

This matter has been the subject of an INTERIM AWARD dated November 15, 1994, in which the rights of the parties were declared, with the exception of the entitlement to and quantum of costs and fees to be awarded Claimant, **SIDNEY CORRIE, JR.** That Award specified a procedure for the proof of such entitlement and quantum. This Award incorporates by reference the INTERIM AWARD, which is attached to this Final Award.

Thereafter, the parties agreed that Claimant, **SIDNEY CORRIE, JR.** is entitled to an award in respect of costs and fees of **TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00)**. There being no further matters to be resolved, this matter is "closed" within the meaning of Rule 42(a), Securities Arbitration Rules of the American Arbitration Association, as amended and in effect May 1, 1993.


In consideration of the foregoing, the following FINAL AWARD is hereby entered:

Respondent, **PRUDENTIAL SECURITIES, INC.**, shall pay to Claimant, **SIDNEY CORRIE, JR.**, the sum of **ONE HUNDRED TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$112,000.00)**, the sum of his damages sustained and recoverable costs and fees. This Award resolves claims pertaining to American Arbitration Association fees and expenses, and Arbitrator compensation and expenses which total **TWENTY-NINE THOUSAND FOUR HUNDRED ELEVEN DOLLARS AND FIFTY-SIX CENTS (\$29,411.56)**.

This FINAL AWARD, in conjunction with the INTERIM AWARD dated November 15, 1994, and attached hereto, disposes of all questions submitted in this arbitration.


DATED:

1/12/95

  
James C. Ingwersen, Esq.  
ARBITRATOR

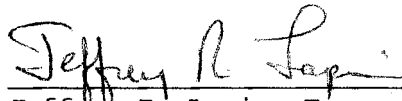
DATED:

1/21/95

  
James E. Palmer  
ARBITRATOR

DATED:

1/26/95

  
Jeffrey R. Lopic, Esq.  
ARBITRATOR

(DAT/ltp)

AMERICAN ARBITRATION ASSOCIATION

Peter Cole Jensen, Peter )  
Cole Jensen, Inc. Money )  
Purchase and Profit Sharing )  
Trust, and Sidney Corrie, Jr.)

No. 74 136 01227 93

Claimants, )

vs. )

INTERIM AWARD

Prudential Securities, Inc. )

Respondent. )

**I. PARTIES; REPRESENTATION; PRELIMINARY AND EVIDENTIARY HEARINGS; LATE OFFERED EVIDENCE.**

This matter came before the undersigned arbitrators on Claimants' "Demand for Arbitration" filed with the American Arbitration Association October 9, 1993. Claimants are Peter Cole Jensen, an individual, and the Peter Cole Jensen, Inc. Money Purchase and Profit Sharing Trust, and Sidney Corrie, Jr. an individual; they are represented by Cary S. Lapidus, Esq., of San Francisco, California. Respondent Prudential Securities, Inc., is represented by Messrs. Michael J. Lawson, Esq. and Daryl S. Landy, Esq., of Steefel, Levitt & Weiss, also of San Francisco, California.

Preliminary hearings were held on April 8 and May 16, 1994, at which certain procedural and evidentiary matters were ruled upon. Evidentiary hearings were held July 11, 12, 13, 14 and 15, and October 11, 12, and 13, 1994. On October 14, 1994, oral argument was heard beginning at noon and concluding at approximately 4:45 p.m. All hearings were held at the offices of the American Arbitration Association, San Francisco, California, pursuant to the Securities Arbitration Rules of that Association, as amended and in effect May 1, 1993.

At the conclusion of the evidentiary hearings, it was stipulated that this Interim Award might be entered, deciding the issues presented except with respect to entitlement to and

quantum of costs and fees to be awarded, and that the hearings would remain open with respect to such costs and fees. Evidence relating to this issue is to be produced in accordance with the terms of this Interim Award.

On October 28, 1994, counsel for Claimants offered certain supplemental evidence concerning actions taken in a criminal case in New York in which the Respondent is a defendant. This was objected to by counsel for Respondent; the objection is well taken, and while we have perused those materials, they have had no effect upon the outcome of this case, and played no part in the arbitrators' deliberations.

## II. UNCONTROVERTED FACTS.

Claimants purchased from Respondent interests in certain limited partnerships, as follows:

The Jensen claimants: <sup>1</sup>

Fund Name	Amount	Date
Energy Income Series I P-3	\$ 60,000	11/21/83
Energy Income Series I P-3	40,000	2/1/84
Energy Income Series II P-4	40,000	4/11/84
Energy Income Series II P-4	40,000	5/11/84
Fogelman Secured Equity LP 1	70,000	4/5/88
Total	\$ 250,000	

Sidney Corrie, Jr.: <sup>2</sup>

Fund Name	Amount	Date
Energy Income Series IV P-17	\$ 100,000	2/24/87
Energy Income Series V P-18	50,000	7/16/87
Cable TV Fund 15-A	30,000	12/19/89
Total	\$ 180,000	

Each of the Energy Income investments was later sold at a loss.

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<sup>1</sup>. The purchaser of these interests was the Peter Cole Jensen, Inc. Money Purchase and Profit Sharing Trust, of which Mr. Jensen is both a trustee and a beneficiary. He has no individual interest in the outcome of this proceeding.

<sup>2</sup>. Mr. Corrie originally owned these interests in common with his former wife. Mr. Corrie is presently the sole owner of the claims arising out of these transactions.

### III. POSITIONS OF THE PARTIES.

Claimants seek to recover their losses under California law on theories of breach of fiduciary duty, negligent misrepresentation, negligence, and common law fraud. Claimants also assert a violation of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), and claim attorney's fees and treble damages under that statute. Finally, Claimants seek punitive damages. No claim is made based upon violation of the federal securities laws, nor is there any claim that the investments were "unsuitable".

Respondent denies any liability, and in addition, asserts that Claimants' claims are barred by the applicable statutes of limitation; that those statutes were not tolled; that the prospectuses alleged to have been delivered in advance of each transaction adequately disclosed the risks of the investments; that Claimants are successful business persons and are sophisticated in investment matters; that any losses are due to Claimants' admitted failure to read those documents; and that the choice of New York law by the parties to govern their contracts precludes the award of punitive damages.

### IV. SETTLEMENT OF JENSEN CLAIMS.

On November 14, 1994, counsel for the parties advised the American Arbitration Association that the claims of the Jensen claimants had been settled. Accordingly, this Interim Award addresses only the claims of Sidney Corrie, Jr.

### V. FINDINGS, DETERMINATIONS, CONCLUSIONS.

After hearing and considering the evidence and argument, the undersigned arbitrators hereby FIND, DETERMINE, AND CONCLUDE:

- a. Respondent did not breach any fiduciary duty to Claimant Corrie with respect to any of his investments.
- b. Respondent was negligent in making various material, incorrect representations to Claimant Corrie with respect to the Energy Income investments. Respondent did not make negligent misrepresentations with respect to the Cable TV investment.
- c. Respondent did not engage in fraudulent conduct in its relations with Claimant Corrie with respect to any of his investments.
- d. Respondent is not liable for common law negligence to Claimant Corrie with respect to any of his investments.

- e. Respondent has not demonstrated that the conduct of Claimant Corrie was so unreasonable as to bar recovery of damages with respect to his Energy Income investments.
- f. Claimant Corrie is not barred by the applicable statutes of limitations with respect to claims arising from the Energy Income investments.
- g. Claimant Corrie has been damaged by Respondent's conduct as found in paragraph b., above, in the amount of \$100,000.00.
- h. Claimant Corrie has not proven a violation of RICO, and is not entitled to recover trebled damages or his attorney's fees incurred in this proceeding.
- i. Claimant Corrie has not demonstrated that an award of punitive damages would be appropriate in this proceeding with respect to his claims. Therefore, it is unnecessary to decide whether the choice of New York law would preclude such an award.
- j. Claimant Corrie is entitled to recover his costs and fees incurred herein (excluding attorney's fees) as provided in Rule 42(c), according to proof.
- k. Claimant Corrie has no entitlement as a result of the transactions described above other than as set forth in the foregoing paragraphs g. and j.

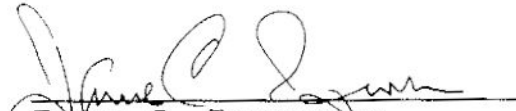
#### VI. INTERIM AWARD.

In consideration of the foregoing, the following INTERIM AWARD is hereby entered:

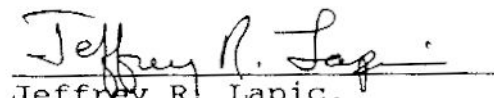
1. Claimant Corrie is entitled to recover from respondent his damages and costs and fees as set forth in the foregoing paragraphs g. and j.; and
2. Claimant Corrie's proof of entitlement to and quantum of costs and fees incurred herein shall be furnished in declaration form within fifteen days following the date of this Interim Award, following which Respondent may within a further fifteen days take exception to that proof. Upon receipt of Respondent's exceptions or the

expiration of that fifteen day period, whichever is sooner, the matter shall be "closed" within the meaning of Rule 42(a).

Dated this 15th day of November, 1994, at San Francisco, California.

  
James C. Ingwersen,  
Arbitrator

  
James E. Palmer,  
Arbitrator

  
Jeffrey R. Lopic,  
Arbitrator