

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Joseph and Audrey Ertl, (Claimants) vs. Prudential Securities Inc. and James Reilly, (Respondents)

Case Number: 00-03709

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Joseph and Audrey Ertl, hereinafter collectively referred to as "Claimants", appeared *pro se*.

Respondents, Prudential Securities Inc. ("Prudential") and James Reilly ("Reilly"), hereinafter collectively referred to as "Respondents": Marcia L. Williams, Esq., Assistant General Counsel, Prudential Securities Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 24, 2000.

Claimants signed the Uniform Submission Agreement: August 24, 2000.

Statement of Answer filed by Respondents on or about: November 13, 2000.

Prudential signed the Uniform Submission Agreement: November 7, 2000.

Reilly signed the Uniform Submission Agreement: October 18, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations; omission of facts; unsuitability; and misleading statements. Claimants' claim involved various government securities and municipal bonds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimants, at all relevant times, had or should have had full knowledge of all material facts concerning the investments they made, including the nature of the investments and the associated risks; Claimants directed and authorized the execution of all transactions in their accounts, and therefore, are estopped from bringing this action; Claimants may not recover anything against Respondents because they ratified all of the activity in their account; to the extent of any losses or diminution in the value of Claimants' investments have occurred, Respondents are not liable for such losses

and diminution because they were within the risks Claimants chose to assume; to the extent Claimants' investments have diminished in value, such diminution is the result, in whole or in part, of unforeseen price fluctuations in volatile securities markets in which Claimants knowingly and willingly participated; Claimants' accounts were not invested in contravention of their investment objectives; Claimants' claims against Respondents are barred, in whole or in part, by the applicable statutes of limitation; the purported wrongdoing on the part of Respondents was not the proximate cause of the losses for which Claimants seek recovery; Claimants have not incurred any damages arising from the actions of Respondents; Claimants' comparative fault, lack of diligence, and failure to conduct their own affairs reasonably, prudently, and responsibly bar any recovery of damages; Claimants are barred from recovery because they failed to mitigate their losses; Claimants' claims fail because they have not sustained any loss or damage; and Claimants' claims fail because they did not justifiably rely upon any alleged misstatements or omissions by Respondents.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$32,820.88, punitive damages in the amount of \$5,000.00, plus all filing and forum fees incurred in this matter.

Respondents requested that the Panel deny Claimants' claim in its entirety and assess all costs associated with this claim against Claimants.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 175.00
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#### **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 events giving rise to the dispute. In this matter, Prudential Securities Inc. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: February 7, 2001	1 session

Two (2) Hearing sessions x \$450.00	= \$ 900.00
Hearing Date: May 2, 2001	2 sessions

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Total Forum Fees	= \$1,350.00
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1. The Arbitrator has assessed \$675.00 of the forum fees jointly and severally against Claimants.
2. The Arbitrator has assessed \$675.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 850.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 225.00

2. Prudential be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,400.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 675.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John R. Mitchell, CPA        -        Public Arbitrator

**Arbitrator's Signature**

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.

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John R. Mitchell, CPA  
Public Arbitrator

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Signature Date

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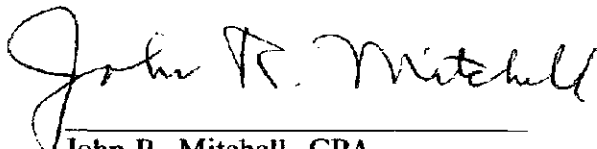
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

John R. Mitchell, CPA                      -                      Public Arbitrator

**Arbitrator's Signature**

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.



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John R. Mitchell, CPA  
Public Arbitrator

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Signature Date

May 29, 2001

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Date of Service (For NASD office use only)