

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Michael Randall and Sheila Randall

and

00-03745  
Phoenix, Arizona

Name of Respondents

Prudential Securities Incorporated  
Janet Horowitz

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**REPRESENTATION OF PARTIES**

Michael Randall and Sheila Randall ("**Claimants**") were represented by Stephen C. Yost, Esq., Campbell, Yost, Hergenroether & Clare, PC, Phoenix, Arizona until October 16, 2001. Since October 16, 2001 Claimants have appeared *pro se*.

Prudential Securities Incorporated ("**Respondent Prudential**") was represented by Martin Hunger, Esq., Prudential Securities Incorporated, New York, New York.

Janet Horowitz ("**Respondent Horowitz**") was represented by Mark Chester, Esq., Scottsdale, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 28, 2000. Submission Agreement of Claimants Michael Randall and Sheila Randall was signed on August 25, 2000.

Statement of Answer was filed by Respondents Prudential Securities Incorporated and Janet Horowitz on or about November 6, 2000. Submission Agreement of Respondent Prudential Securities Incorporated was signed on November 9, 2000 by Richard G. Masterson. Submission Agreement of Respondent Janet Horowitz was signed and undated.

**CASE SUMMARY**

Claimants alleged that Respondent Prudential failed to supervise Respondent Horowitz, that both Respondents breached fiduciary duties, were negligent, unsuitably traded the accounts, churned the accounts and were guilty of fraud in the handling of their accounts.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Respondent Horowitz was properly supervised, that Claimants at all times were aware of the activity in the accounts and approved or ratified that activity.

### **RELIEF REQUESTED**

In their Statement of Claim, Claimants requested an award in an amount in excess of \$50,000.00. Specifically, Claimants requested recovery of the commissions generated, interest paid, lost market gains from non-churned, suitable investments handled in accordance with Respondents' fiduciary duties, losses resulting from the failure to execute transactions, and attorneys' fees and costs. Claimants also requested an award of unspecified punitive damages.

Respondents requested that the Claimants take nothing by way of their Statement of Claim, that they be awarded their costs and for such other and further relief the Arbitration panel may deem just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

The hearing on October 16, 2002 was opened at approximately 10:00 a.m., having been scheduled to commence at 9:00 a.m. The delay in the start time was caused by the Arbitration Panel's desire to afford Claimants the opportunity to appear at the hearing. During the delay, NASD staff telephoned the offices of Claimant Michael Randall to attempt to ascertain his whereabouts. The office advised staff that Michael Randall was not in the office. NASD staff requested that the office attempt to contact Michael or Sheila Randall. After waiting 15-20 minutes, NASD staff again contacted the office of Michael Randall to ascertain the status of the office's attempt to locate Michael or Sheila Randall. At that time, NASD staff was advised that messages had been left at the home and mobile numbers of Michael Randall.

Respondents requested that the Arbitration Panel dismiss the claims asserted in this matter and award them costs, fees and expenses incurred in this matter. The Arbitration Panel took testimony with respect to those requests.

After the conclusion of the hearing and the dismissal of the Respondents from the hearing room, Michael Randall telephoned the hearing location and advised NASD staff that Claimants had filed for bankruptcy. NASD staff requested that verification be sent immediately.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter by Claimants Michael Randall and Sheila Randall shall be and hereby are dismissed in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, not specifically enumerated above, including but not limited to attorneys fees.
4. If not for the bankruptcy filing on behalf of Claimants, the undersigned Arbitrators would have granted the request of Respondents for an award of costs, fees and expenses.

### **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 = \$300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Prudential Securities Incorporated.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

December 4-7 2001 hearing dates, adjournment requested by Claimants, fee waived = \$1,125.00

### **Forum Fees and Assessments**

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

|  |              |
|--|--------------|
| One (1) Pre-hearing session(s) with Panel x \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference(s): April 25, 2001 1 session    |              |
| One (1) Hearing sessions x \$1,125.00                  | = \$1,125.00 |
| Hearing Date(s): October 16, 2002 1 session            |              |
| Total Forum Fees                                       | = \$2,250.00 |

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Michael Randall and Sheila Randall.

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Prudential Securities Incorporated.

### **Fee Summary**

Claimants, Michael Randall and Sheila Randall, shall be and hereby are jointly and severally liable for:

|   |               |
|---|---------------|
| Initial Filing Fee                        | = \$ 300.00   |
| <u>Forum Fees</u>                         | = \$ 1,125.00 |
| Total Fees                                | = \$ 1,425.00 |
| <u>Less payments</u>                      | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00     |

Respondent, Prudential Securities Incorporated, shall be and hereby is liable for:

|   |               |
|---|---------------|
| Member Fees   | = \$ 4,600.00 |
| <u>Forum Fees</u>                                       | = \$ 1,125.00 |
| Total Fees  | = \$ 5,725.00 |
| <u>Less payments</u>                                    | = \$ 7,100.00 |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$ 1,375.00 |

All balances are due to NASD Dispute Resolution, Inc.

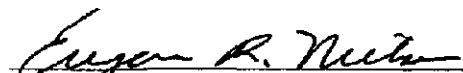
**ARBITRATION PANEL**

Eugene R. Nielson - Public Arbitrator, Presiding Chair

John R. Molloy - Public Arbitrator

Daniel O. Birkle - Non-Public Arbitrator

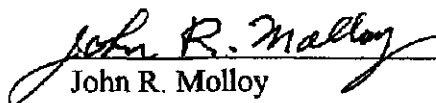
Concurring Arbitrators:



Eugene R. Nielson

Public Arbitrator, Presiding Chair

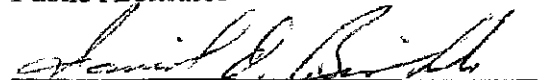
10-16-02  
Signature Date



John R. Molloy

Public Arbitrator

10-16-02  
Signature Date



Daniel O. Birkle

Non-Public Arbitrator

10/16/02  
Signature Date