

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

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In the Matter of the Arbitration Between:

Sloan W. Kelly, (Claimant) vs. Shane Merritt and Prudential Securities Incorporated,  
(Respondents)

Case Number: 00-03794

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, Sloan W. Kelly, hereinafter referred to as "Claimant": Robert A. Shaines, Esq.,  
Shaines & McEachern, Portsmouth, NH.

Respondents, Prudential Securities, Inc. ("Prudential") and Shane E. Merritt ("Merritt"),  
hereinafter collectively referred to as "Respondents": Michael B. Cosentino, Esq., Seegel  
Lipshutz & Wilchins, PC, Wellesley, MA. Previously represented by: Theodore M. Davis,  
Esq., and Darleen Monaco, Esq., Assistant General Counsels at Prudential Securities  
Incorporated, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 31, 2000.

Claimant signed the Uniform Submission Agreement: August 17, 2000.

Statement of Answer filed by Respondents on or about: January 19, 2001.

Respondent Prudential signed the Uniform Submission Agreement: January 19, 2001.

Respondent Merritt signed the Uniform Submission Agreement: November 13, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: Failure to Supervise; Negligence; and  
Breach of Fiduciary Duty.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the  
Statement of Claim and asserted the following defenses: Statement of Claim fails to state a  
claim upon which relief can be granted; Claimant, at all relevant times, had or should have  
had full knowledge of all material facts concerning the investments she made, including the  
nature of the investments and the associated risks and any and all withdrawals made from the  
accounts; Claimant directed and authorized the execution of all transactions in her account,  
and, therefore is estopped from bringing this action; Claimant may not recover anything  
against Respondents because she ratified all of the activity in the account; Respondent did not

make any misrepresentations or omissions with respect to the investments made in Claimant's account; to the extent that any losses or diminution in the value of Claimant's investments have occurred, Respondents are not liable for such losses and diminution because they were within the risks Claimant chose to assume; Claimant is barred from recovery to the extent that she has failed to mitigate her losses; Claimant's claims fail because she did not justifiably rely upon any alleged misstatements or omissions by Respondents; Claimant has failed to plead or establish a fiduciary relationship existed with Respondents; and Claimant failed to establish the existence of a contract, real or implied, between herself and Respondents and a breach thereof.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$29,869.73. Claimant further requested punitive damages in the amount of \$30,000.00, plus attorney's fees, and all additional costs.

Respondent requested that this claim be denied in its entirety.

#### **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.

On November 8, 2001, Respondents made a Motion to Dismiss. On the same day, Respondents' Motion was withdrawn.

#### **AWARD**

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

1. Claimant's claims are hereby denied 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 = \$ 225.00

#### **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 Incorporated is the member firm.

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

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

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

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00

Pre-hearing conference: July 19, 2001 1 session

Three (3) Hearing sessions x \$750.00 = \$2,250.00

Hearing Dates: November 5, 2001 2 sessions

November 8, 2001 1 session

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Total Forum Fees = \$3,000.00

1. The Panel has assessed all of the forum fees against Respondent Prudential.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 225.00

Total Fees = \$ 225.00

Less payments = \$ 975.00

Refund Due to Claimant = \$ 750.00

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03794  
Award Page 4

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2. Respondent be and hereby is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	<u>= \$3,000.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

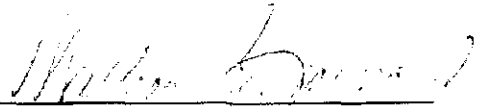
All balances are due and payable to NASD Dispute Resolution, Inc.


ARBITRATION PANEL

William George Hayward, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Lisette C. Smith	-	Public Arbitrator
Avery P. Maher, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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.

  
\_\_\_\_\_  
William George Hayward, Jr., Esq.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Lisette C. Smith  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Avery P. Maher, Esq.  
Non- Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
December 12, 2001  
1Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03794  
Award Page 6

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NASD Dispute Resolution, Inc.  
Arbitration No. 00-03794  
Award Page 7

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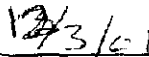
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