

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Norman Beyerman and Mary Ann Beyerman, (Claimants) vs. Prudential Securities, Inc. and  
Oswald Mechsner, (Respondents)

Case Number: 00-04381

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants Norman Beyerman ("N. Beyerman") and Mary Ann Beyerman ("M. Beyerman"),  
hereinafter collectively referred to as "Claimants": Andrew Giles Freda, Esq., a sole practitioner,  
Teaneck, NJ.

Respondent Prudential Securities, Inc. ("PSI"): John C. Cannistraci, Esq., Vice President and  
Assistant General Counsel, New York, NY.

Respondent Oswald Mechsner ("Mechsner"): John E. MacDonald, Esq., Stark & Stark,  
Princeton, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: October 2, 2000.

Reply to PSI's Motion to Dismiss filed by Claimants on or about: January 24, 2001.

N. Beyerman signed the Uniform Submission Agreement: September 27, 2000.

M. Beyerman signed the Uniform Submission Agreement: September 27, 2000.

Statement of Answer and Motion to Dismiss filed by PSI on or about: January 4, 2001.

PSI signed the Uniform Submission Agreement: January 22, 2001.

Statement of Answer and Motion to Dismiss filed by Mechsner on or about: January 17,  
2001.

Mechsner signed the Uniform Submission Agreement: December 19, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; misrepresentations; failure to  
state material facts; unauthorized transactions; failure to supervise; breach of contract; breach

of fiduciary duty; violations of federal and state securities laws; and violations of the rules and regulations of the NASD and various national securities exchanges. Claimants' claim involved the stocks of Herbalife and Saba Petroleum, as well as Fannie Mae and Federal Home Loan Mortgage Corporation securities.

Unless specifically admitted in its Answer, PSI denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants authorized, accepted, and/or ratified each of the transactions of which they now complain; Claimants' account was handled properly and in accordance with the "Know Your Customer" rule of the New York Stock Exchange and the "suitability rule" of the NASD, as well as other applicable rules and regulations; any losses sustained by Claimants are attributable to market conditions and to their investment decisions, not to any action or inaction on Respondents' part; Claimants have failed to state a claim upon which relief can be granted; no basis whatsoever exists for any claim for attorneys' fees in this proceeding; at all times mentioned in the Statement of Claim, Claimants were responsible for making all decisions concerning whether or not to purchase or sell any securities; by entering into the transactions complained of, Claimants expressly assumed the risk of any possible damages or losses; Claimants failed to exercise reasonable or ordinary care, caution, or prudence with respect to the matters alleged in the Statement of Claim; no basis whatsoever exists for any claim for punitive damages in this proceeding; and Claimants' action is barred by the applicable statute of limitations, laches, and is ineligible under NASD Rule 10304.

Unless specifically admitted in his Answer, Mechsner 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 may be granted; Claimants directed, approved, and authorized each and every transaction in their account; Claimants, by their conduct, and under all the circumstances of this case, are estopped from asserting any claims with respect to the transactions made in their account; Claimants failed to mitigate any alleged damages; any alleged losses which may have occurred were the direct result of market conditions and other factors beyond the control of Mechsner; all transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with their investment objectives and financial condition; there was no fiduciary duty owed to Claimants by Respondents as a matter of law, or under the circumstances of this case; any duties owed by Mechsner to

Claimants were fully and faithfully carried out; Mechsner did not act with any intent to defraud Claimants or with reckless disregard of their interests; there were no misrepresentations or omissions of material facts upon which Claimants relied to their detriment; and there is no private right of action for any alleged violation of the rules of any self-regulatory organization.

**RELIEF REQUESTED**

Claimants requested:

- a. Compensatory damages in the approximate amount of \$98,908.45, the precise amount to be determined based upon proof of specific damages presented before the Panel;
- b. Costs, expenses, and disbursements, including attorneys' fees in pursuing this arbitration proceeding;
- c. Punitive damages in the amount of \$300,000.00; and
- d. Such other relief as the Panel deems just and proper.

PSI requested that the Panel:

- a. Dismiss Claimants' claims in their entirety;
- b. Award PSI its attorneys' fees and costs of defending this claim; and
- c. Grant to PSI such other and further relief as it deems necessary and proper.

Mechsner requested judgment dismissing the Statement of Claim, with prejudice, together with an Award of all reasonable costs and expenses, including reasonable attorneys' fees, costs of suit, and such further relief as the Panel deems just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

By letters dated October 28, 2002 and February 13, 2003, NASD Dispute Resolution directed the parties to submit mutually agreeable dates for rescheduling a pre-hearing conference in this case. The parties failed to provide the requested dates. This matter was referred to the Panel for a determination as to the disposition of this arbitration. After due consideration, the Panel has decided to dismiss this arbitration in its entirety, without prejudice.

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, as well as the parties' failure to provide requested dates for rescheduling a pre-hearing conference in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety, without prejudice.
2. All other requests for relief are hereby denied.

**FEEs**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution 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 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 = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

**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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00

Pre-hearing conferences: May 1, 2001 1 session

November 28, 2001 1 session

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$750.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$750.00 of the forum fees against PSI.
3. The Panel has assessed \$750.00 of the forum fees against Mechsner.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 750.00

Total Fees = \$1,050.00

Less payments = \$1,425.00

Refund Due Claimants = \$ 375.00

2. PSI is solely liable for:

Member Fees = \$4,600.00

Forum Fees = \$ 750.00

Total Fees = \$5,350.00

<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 750.00

3. Mechsner is solely liable for:

<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 750.00


All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Berthold H. Hoeniger, Esq.	-	Public Arbitrator, Presiding Chair
John E. Hansen, Esq.	-	Public Arbitrator
Joseph J. Cassidy	-	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.

  
Berthold H. Hoeniger, Esq.  
Public Arbitrator, Presiding Chair

05/24/03  
Signature Date

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John E. Hansen, Esq.  
Public Arbitrator

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Signature Date

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Joseph J. Cassidy  
Non-Public Arbitrator

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

\_\_\_\_\_  
June 3, 2003

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Date of Service (For NASD Dispute Resolution use only)

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John E. Hansen, Esq.	-	Public Arbitrator
Joseph J. Cassidy	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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

  
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John E. Hansen, Esq.  
Public Arbitrator

  
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Berthold H. Hoeniger, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

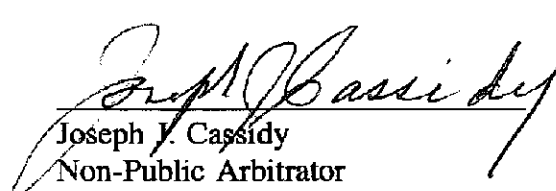
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John E. Hansen, Esq.  
Public Arbitrator

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Signature Date

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Joseph J. Cassidy  
Non-Public Arbitrator

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5/22/03  
Signature Date

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June 3, 2003

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