

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Michael D. Whitfield

Case Number: 00-04942

Name of the Respondents  
Prudential Securities, Inc.  
Charles Toadvine

Hearing Site: Baltimore, MD

---

**REPRESENTATION OF PARTIES**

Claimant, Michael D. Whitfield ("Whitfield"), hereinafter referred to as "Claimant": William S. Heyman, Esq., Tydings & Rosenberg, Baltimore, MD.

Respondent, Prudential Securities, Inc. ("PSI") hereinafter referred to as "Respondent PSI": John C. Cannistraci, Esq., New York, NY.

Respondent, Charles Toadvine ("Toadvine"), hereinafter referred to as "Respondent Toadvine" represented himself.

**CASE INFORMATION**

Statement of Claim filed on: November 6, 2000

Claimant signed the Uniform Submission Agreement: October 31, 2000

Motion to Dismiss and Motion for a More Specific Statement of Claim filed by Respondent PSI on: January 22, 2001

A representative of Respondent PSI signed the Uniform Submission Agreement: January 22, 2001

Response to Respondent PSI's Motion to Dismiss, Motion for a More Specific Statement of Claim and Answer filed by Claimant on: February 2, 2001

Response to Amended Statement of Claim and Cross Claim Against Respondent Toadvine filed by Respondent PSI on: March 27, 2001

Respondent Toadvine did not file an Answer or Uniform Submission Agreement

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: fraud; breach of fiduciary duty; violation of NASD rules of conduct; negligence; negligent supervision; breach of contract; violation of the Securities and Exchange Act of 1934, Section 10(b), and SEC Rule 10b-5; and, respondeat superior. The causes of action relate to the purchase and sale of shares of MVC Draper Fisher Jurvetson Fund I (MVC) and Beverly Hills Ltd (BLTD), a bulletin board stock.

Unless specifically admitted in its Answer, Respondent PSI denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a legitimate cause of action.

Respondent PSI asserted the following causes of action against Respondent Toadvine in its Cross Claim, among others: Respondent Toadvine acted negligently and outside the scope of his employment.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 675,000
Punitive Damages	\$ 1,950,000
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent PSI requested dismissal of the Statement of Claim, attorneys' fees, and costs. In its Cross Claim Respondent PSI also requested indemnification or contribution from Respondent Toadvine, that any award be assessed against Respondent Toadvine individually, attorneys' fees, and costs.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Toadvine has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Toadvine did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration or Answer, but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing, Respondent PSI made a Motion to Dismiss, which was denied.

At the hearing, Claimant orally amended the Statement of Claim by withdrawing a portion of the claim equal to \$60,000 in compensatory damages.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Toadvine is liable to and shall pay to Claimant the sum of \$1.00 in compensatory damages. Interest on this amount shall accrue at the legal rate of interest in the state of Maryland, beginning on the date of service of this Award and ceasing upon payment in full of this awarded amount.
2. Respondent Toadvine is liable to and shall pay to Claimant \$20,000 in punitive damages. Interest on this amount shall accrue at the legal rate of interest in the state of Maryland, beginning on the date of service of this Award and ceasing upon payment in full of this awarded amount. The basis for the award of punitive damages is Respondent Toadvine's egregious conduct of fabrication and concealment, which he had admitted at the hearing.
3. Claimant's claims against Respondent PSI are denied in their entirety.
4. The parties shall bear their respective costs and attorneys' fees except as Fees are specifically addressed below.
5. Any and all requests for relief not specifically addressed herein are denied in their entirety.

### **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	= \$ 500
Cross claim filing fee	= \$ 500

#### **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. Accordingly, PSI is a party.

Member surcharge	= \$ 2,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$ 4,500

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

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$ 1,200	= \$ 2,400
Pre-hearing conferences: November 18, 2001 1 session	

March 6, 2002                      1 session

Seven (7) Hearing sessions @ \$1,200    = \$ 8,400

Hearing Dates:                      May 7, 2002                      1 session  
    May 8, 2002                      2 sessions  
    May 9, 2002                      2 sessions  
    May 10, 2002                      2 sessions

Total Forum Fees    = \$ 10,800

1. The Panel has assessed \$3,600 of the forum fees to Claimant.
2. The Panel has assessed \$3,600 of the forum fees to Respondent PSI.
3. The Panel has assessed \$3,600 of the forum fees to Respondent Toadvine.

#### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee    = \$ 500  
 Forum Fees    = \$ 3,600

Total Fees    = \$ 4,100  
 Less payments    = \$ 1,770

Balance Due NASD Dispute Resolution, Inc.    = \$ 2,330

2. Respondent, PSI, is solely liable for:

Filing Fee    = \$ 500  
 Member Fees    = \$ 7,600  
 Forum Fees    = \$ 3,600

Total Fees    = \$ 11,700  
 Less payments    = \$ 7,100

Balance Due NASD Dispute Resolution, Inc.    = \$ 4,600

3. Respondents, Toadvine, is solely liable for:

Forum Fee    = \$ 3,600

Total Fees    = \$ 3,600  
 Less payments    = \$ 00

Balance Due NASD Dispute Resolution, Inc.    = \$ 3,600

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

NASD Dispute Resolution, Inc.

Arbitration No. 00-04942

Award Page 5

ARBITRATION PANEL

Joseph A. Kenary, Esq.

Arnold Samuel Tesh

William R. Brown

-

-

-

Public Arbitrator, Presiding Chairperson

Public Arbitrator, Panelist

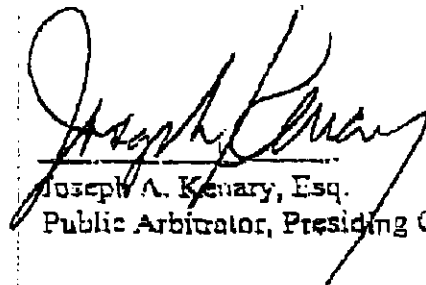
Non-Public Arbitrator, Panelist

NASD Dispute Resolution, Inc.

Arbitration No. 00-04942

Award Page 6

Concurring Arbitrators' Signatures



Joseph A. Kenary, Esq.

Public Arbitrator, Presiding Chairperson

6-20-02

Signature Date

Arnold Samuel Tesh

Public Arbitrator, Panelist

Signature Date

William R. Brown

Non-Public Arbitrator, Panelist

Signature Date

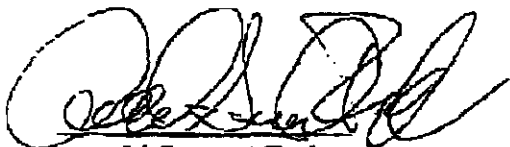
6/21/2002

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Joseph A. Kenary, Esq.  
Public Arbitrator, Presiding Chairperson

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



\_\_\_\_\_  
Arnold Samuel Tesh  
Public Arbitrator, Panelist

\_\_\_\_\_  
June 20, 2002  
Signature Date

\_\_\_\_\_  
William R. Brown  
Non-Public Arbitrator, Panelist

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

6/21/2002  
Date of Service (For NASD Dispute Resolution office use only)