

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Brian W. Foster, (Claimant) vs. Prudential Securities Incorporated and Mark S. Hayek,
(Respondents)

Case Number: 00-05662

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Brian W. Foster, hereinafter referred to as "Claimant": Andrew D. Epstein, Esq.,
Barker, Epstein & Loscocco, Boston, MA.

Respondents, Prudential Securities Incorporated ("PSI") and Mark S. Hayek ("Hayek"),
hereinafter collectively referred to as "Respondents": Marcia Williams, Esq., Vice President
and Assistant General Counsel, Prudential Securities Incorporated, New York, NY.
Previously represented by: Theodore M. Davis, Esq., Assistant General Counsel and
Assistant Vice President, Prudential Securities Incorporated, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2000.

Claimant signed the Uniform Submission Agreement: December 21, 2000.

Joint Statement of Answer filed by Respondents on or about: May 10, 2001.

PSI signed the Uniform Submission Agreement: May 10, 2001.

Hayek signed the Uniform Submission Agreement: April 11, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; negligence; failure to
execute; and breach of fiduciary duty. Claimant's claim involved the Van Wagoner Mid-Cap
Fund.

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; Claimant, at all relevant times, had or should have
had full knowledge of all material facts concerning the investments he made, including the
nature of the investments and the associated risks; Claimant directed and authorized the
execution of all transactions in his account, and is therefore estopped from bringing this
action; Claimant may not recover anything against Respondents because he ratified all of the

activity in his account; Respondents 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; to the extent Claimant's 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 Claimant knowingly and willingly participated; Claimant is barred from recovery to the extent that he has failed to mitigate his losses; Claimant's claims fail because he did not justifiably rely upon any alleged misstatements or omissions by Respondents; Claimant's accounts were not invested in contravention of his investment objectives; Claimant has failed to plead or establish that a fiduciary relationship existed with Respondents; Claimant has failed to establish the existence of a contract, real or implied, between himself and Respondents, and a breach thereof; and there is no private cause of action for violations of the NASD Rules of Fair Practice.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$17,980.72, plus punitive damages, interest at the rate of 12%, attorneys' fees, and forum fees.

Respondents requested that Claimant's 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.

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. Prudential be and hereby is solely liable for and shall pay to Claimant the sum of \$10,077.20 as compensatory damages, plus interest at 12% per annum from December 21, 2000 totaling \$1,612.32, for a total Award of \$11,689.52.
2. Claimant's request for punitive damages is hereby denied.
3. All claims against Hayek are hereby dismissed.

4. Prudential be and hereby is solely liable for and shall pay to Claimant the sum of \$125.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
5. 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	= \$ 125.00
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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 Incorporated is a party.

Member surcharge	= \$ 400.00
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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 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 1, 2001 1 session	
One (1) Hearing session x \$450.00	= \$ 450.00
Hearing Date: April 12, 2002 1 session	
Total Forum Fees	= \$ 900.00

The Arbitrator has assessed all of the forum fees against PSI.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 125.00
Total Fees	= \$ 125.00
<u>Less payments</u>	= \$1,025.00
Refund Due Claimant	= \$ 900.00

As stated in the "Award" section above, PSI is solely liable and shall reimburse Claimant for the \$125.00 filing fee.

2. PSI be and hereby is solely liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,300.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 900.00

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

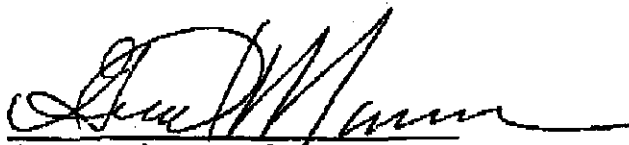
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ARBITRATION PANEL

Gerard S. Marsan, Esq.

Public Arbitrator

Arbitrator's Signature



Gerard S. Marsan, Esq.
Public Arbitrator

4/25/02
Signature Date

April 26, 2002
Date of Service (For NASD office use only)