

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

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In the Matter of the Arbitration Between:

Sheila Madding IRA and Sheila Madding Family Trust v. Prudential Securities, Inc., Jennison and Associates, et al.

Case Number: 01-01918

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Sheila Madding IRA

Morton Friedlander, Esq.  
Mediation & Arbitration  
Service  
North Las Vegas, Nevada

Sheila Madding Family Trust

Morton Friedlander, Esq.  
Mediation & Arbitration  
Service  
North Las Vegas, Nevada

For Respondents:

Prudential Securities, Inc.

Charles B. LaChaussee, Esq.  
Prudential Securities, Inc.  
San Francisco, California

James E. Lemonick

Charles B. LaChaussee, Esq.  
Prudential Securities, Inc.  
San Francisco, California

James R. Zitch

Charles B. LaChaussee, Esq.  
Prudential Securities, Inc.  
San Francisco, California

Stephen M. Moore

Charles B. LaChaussee, Esq.  
Prudential Securities, Inc.  
San Francisco, California

William H. French, III

Charles B. LaChaussee, Esq.  
Prudential Securities, Inc.  
San Francisco, California

Jennison and Associates

Jonathan R. Tuttle, Esq.  
Debevoise & Plimpton  
Washington, D.C.

### CASE INFORMATION

Statement of Claim filed on April 6, 2001.

Claimants' Uniform Submission Agreement signed on April 8, 2001.

Statement of Answer filed by Respondents' Prudential Securities, Inc., James E. Lemonick, James R. Zitch, Stephen M. Moore, and William H. French, III on July 3, 2001.

Respondent Prudential Securities, Inc.'s Uniform Submission Agreement signed on July 3, 2001.

Respondent James E. Lemonick's Uniform Submission Agreement signed on August 14, 2001.

Respondent Stephen M. Moore's Uniform Submission Agreement signed on August 17, 2001.

Statement of Answer filed by Respondent Jennison and Associates on July 3, 2001.

Respondent Jennison and Associates' Uniform Submission Agreement signed on July 2, 2001.

### CASE SUMMARY

Claimants alleged the following claims:

1. Breach of contract
2. Breach of fiduciary duty
3. Negligence
4. Failure to Supervise
5. Misrepresentations
6. Non-Disclosures
7. Churning
8. Manipulations
9. Suitability

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$166,500.00 in compensatory damages, \$100,000.00 in punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

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

Respondents James R. Zitch and William H. French, III did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim are bound by the determination of the Panel on all issues submitted.

Claimants dismissed Respondent Jennison and Associates on or about July 15, 2002.

Claimants dismissed with prejudice Respondents James R. Zitch, Stephen M. Moore and William H. French, III on or about August 2, 2002.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.

- 3) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent's James E. Lemonick, James R. Zitch, Stephen M. Moore and William H. French, III's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents James E. Lemonick James R. Zitch, Stephen M. Moore and William H. French, III must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Prudential Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

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

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

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 19, 2002 1 session	

(6) Hearing sessions @ \$1,125.00/session		= \$ 6,750.00
Hearings:	September 24, 2002	2 sessions
	September 25, 2002	2 sessions
	September 26, 2002	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 7,875.00</b>
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1. The Panel assessed \$ 3,375.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 3,375.00 of the forum fees jointly and severally to Respondents Prudential Securities, Inc. and James E. Lemonick.
3. The Panel waived \$1,125.00 of the forum fees for the February 19, 2002 pre-hearing conference.

#### **Fee Summary**

1. Claimants Sheila Madding IRA and Sheila Madding Family Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 3,675.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

2. Respondent Prudential Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ (4,600.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Prudential Securities, Inc. and James E. Lemonick are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,375.00
<u>Less payments by Prudential Securities, Inc.</u>	<u>= \$ (100.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,275.00</b>

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

**ARBITRATION PANEL**

Delores I. Smith, Esq.	-	Public, Presiding Chair
Ernest L. Burnside, M.A.	-	Public Arbitrator
Kimbrough S. Bassett	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Delores I. Smith, Esq.  
Chair, Public Arbitrator

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Signature Date

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Ernest L. Burnside, M.A.  
Public Arbitrator

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Signature Date

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Kimbrough S. Bassett  
Non-Public Arbitrator

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Signature Date

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Date of Service  
(NASD Use Only)

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Ernest L. Burnside, M.A.	-	Public Arbitrator
Kimbrough S. Bassett	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Delores I. Smith, Esq.  
Delores I. Smith, Esq.  
Chair, Public Arbitrator

September 30, 2002  
Signature Date

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Ernest L. Burnside, M.A.  
Public Arbitrator

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

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Kimbrough S. Bassett  
Non-Public Arbitrator

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

10/2/02  
Date of Service  
(NASD Use Only)

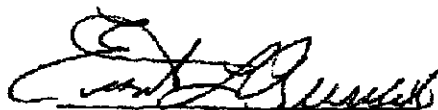
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Kimbrough S. Bassett	-	Non-Public Arbitrator

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Delores I. Smith, Esq.  
Chair, Public Arbitrator

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Signature Date



Ernest L. Burnside, M.A.  
Public Arbitrator

10/1/02  
Signature Date

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Kimbrough S. Bassett  
Non-Public Arbitrator

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Signature Date

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ARBITRATION PANEL

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Kimbrough S. Bassett	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Delores I. Smith, Esq.  
Chair, Public Arbitrator

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Signature Date

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Ernest L. Burnside, M.A.  
Public Arbitrator

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Signature Date



Kimbrough S. Bassett  
Non-Public Arbitrator



Signature Date

10/2/02

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Date of Service  
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