

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

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In the Matter of the Arbitration Between:

The Jeffrey Matthews Financial Group, LLC, (Claimant) vs. Prudential Securities Inc., Brian Marzulli, and Joseph Kehoe, (Respondents)

Case Number: 01-02750

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, The Jeffrey Matthews Financial Group, LLC, hereinafter referred to as "Claimant": Jonathan Kord Lagemann, Esq., a sole practitioner, New York, NY.

Respondents, Prudential Securities Inc. ("PSI"), Brian Marzulli ("Marzulli"), and Joseph Kehoe ("Kehoe"), hereinafter collectively referred to as "Respondents": Thomas M. Campbell, Esq., Smith Campbell, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 22, 2001.

Claimant signed the Uniform Submission Agreement: May 21, 2001.

Joint Statement of Answer filed by Respondents on or about: August 27, 2001.

PSI signed the Uniform Submission Agreement: October 1, 2001.

Marzulli signed the Uniform Submission Agreement: October 1, 2001.

Kehoe signed the Uniform Submission Agreement: October 1, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of duty of fidelity and loyalty; breach of agent's duty; tortious interference with contract; and conversion.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents' conduct has been proper and consistent with industry practice throughout the time period in question; Claimant did not give any accounts to Marzulli; Claimant's claims are barred by its own unclean hands; the liquidated damages clause of Marzulli's contract is an unenforceable penalty; and Claimant is not entitled to any money damages.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the approximate amount of \$400,000.00, plus costs and attorneys' fees.

Respondents requested that Claimant's request for damages, including liquidated damages, be denied in its entirety, and that the Statement of Claim be dismissed with prejudice.

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

1. PSI be and hereby is solely liable for and shall pay to Claimant the sum of \$25,000.00 as compensatory damages.
2. Marzulli be and hereby is solely liable for and shall pay to Claimant the sum of \$25,000.00 as compensatory damages.
3. All claims against Kehoe are hereby dismissed in their entirety.
4. 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	= \$1,000.00
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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, The Jeffrey Matthews Financial Group, LLC and Prudential Securities Inc. are parties.

**The Jeffrey Matthews Financial Group, LLC**

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

**Prudential Securities Inc.**

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

**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 arbitrators, including a pre-hearing conference with the arbitrators, 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: May 14, 2002 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: February 6, 2002 1 session	
Five (5) Hearing sessions x \$1,125.00	= \$5,625.00
Hearing Dates: July 16, 2002 2 sessions	
July 17, 2002 2 sessions	
July 18, 2002 1 session	
Total Forum Fees	= \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees against PSI.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$9,200.00
<u>Less payments</u>	<u>= \$6,725.00</u>
Balance Due NASD Dispute Resolution	= \$2,475.00

2. PSI be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$8,200.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$3,600.00


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

**ARBITRATION PANEL**

Philip M. Mandel, Esq.	-	Non-Public Arbitrator, Presiding Chair
Malcolm L. Elvey	-	Public Arbitrator
Arnold Linsky	-	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.

  
Philip M. Mandel, Esq.  
Non-Public Arbitrator, Presiding Chair

8/9/02  
Signature Date

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Malcolm L. Elvey  
Public Arbitrator

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

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Arnold Linsky  
Public Arbitrator

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Signature Date

August 15, 2002  
Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator, Presiding Chair

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Signature Date

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Public Arbitrator

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Signature Date

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