

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

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In the Matter of the Arbitration Between:

Karen R. Carney, (Claimant) vs. Prudential Securities Incorporated and John Cochran,  
(Respondents)

Case Number: 01-02906

Hearing Site: Columbus, Ohio

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**REPRESENTATION OF PARTIES**

Claimant, Karen R. Carney, hereinafter referred to as "Claimant": Matthew Yackshaw, Esq.,  
Day, Ketterer, Raley, Wright & Rybolt, Ltd., Canton, OH.

Respondents, Prudential Securities Incorporated ("PSI") and John Cochran ("Cochran"),  
hereinafter collectively referred to as "Respondents": Martin Hunger, Esq., First Vice  
President and Associate General Counsel, Prudential Securities Incorporated, New York,  
NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 31, 2001.

Claimant signed the Uniform Submission Agreement: May 30, 2001.

Joint Statement of Answer filed by Respondents on or about: August 8, 2001.

PSI signed the Uniform Submission Agreement: May 8, 2001.

Cochran signed the Uniform Submission Agreement: August 3, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: churning; breach of fiduciary duty;  
unsuitability; breach of contract; negligence; and fraud. Claimant's claim involved  
unspecified financial products.

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 may be granted; Claimant expressly approved and ratified the acts  
and transactions complained of and upon which recovery is sought; Claimant is precluded  
from recovery on the principles of ratification and waiver; Claimant failed to use the  
requisite due diligence in monitoring, trading, managing, and handling her accounts;  
Claimant's alleged losses were proximately caused by her own conduct or negligence, or the  
acts of third parties, or Claimant is guilty of contributory negligence in relation to the

complained of transactions; Claimant failed to mitigate her damages; all risks concerned in investing in securities were fully explained to Claimant, and she knowingly, willingly, and voluntarily assumed the risks of her investments; Claimant's actions are barred by the principle of laches; Claimant, by her own conduct, has waived any and all rights she may have against Respondents; any losses that Claimant incurred resulted from business and market price fluctuations beyond the control and responsibility of Respondents; PSI made a good-faith effort, as a controlling person, to prevent any alleged wrongful act on the part of any employee of PSI, and PSI did not directly or indirectly induce any conduct that could constitute a cause of action; and Claimant is barred from bringing any cause of action based on the allegations contained in the Statement of Claim under the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the approximate amount of \$374,139.44; punitive damages in the amount of \$100,000.00; interest at the rate of 10% per annum; all costs of this action, including reasonable attorneys' fees and expert witness fees; and such other relief as the Panel may deem appropriate.

Respondents requested:

1. That Claimant take nothing by way of the Statement of Claim;
2. Costs of suit incurred herein; and
3. Such other and further relief as the Panel may deem just and proper.

### **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 and Cochran be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$67,504.00 as compensatory damages, plus interest at the rate of 10% accruing from June 7, 2002 until date of payment.

2. Claimant's request for punitive damages is hereby denied.
3. 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	= \$ 300.00
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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	= \$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 Panel x \$1,125.00	= \$1,125.00
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Pre-hearing conference:	January 7, 2002	1 session
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Seven (7) Hearing sessions x \$1,125.00	= \$7,875.00
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Hearing Dates:	June 5, 2002	2 sessions
	June 6, 2002	2 sessions
	June 7, 2002	3 sessions

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Total Forum Fees	= \$9,000.00
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1. The Panel has assessed \$3,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,000.00 of the forum fees against PSI.
3. The Panel has assessed \$3,000.00 of the forum fees against Cochran.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,000.00</u>
Total Fees	= \$3,300.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,875.00

2. PSI be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$3,000.00</u>
Total Fees	= \$7,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

3. Cochran be and hereby is solely liable for:


<u>Forum Fees</u>	= <u>\$3,000.00</u>
Total Fees	= \$3,000.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

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

**ARBITRATION PANEL**

W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
John S. Weisheit	-	Public Arbitrator
Bertha A. Richardson	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
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W. Sean Kelleher, Esq.  
Public Arbitrator, Presiding Chair

07/02/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John S. Weisheit  
Public Arbitrator

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

\_\_\_\_\_  
Bertha A. Richardson  
Industry Arbitrator

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

July 9, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
John S. Weisheit	-	Public Arbitrator
Bertha A. Richardson	-	Industry Arbitrator

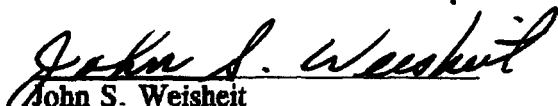
**Concurring Arbitrators' Signatures**

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W. Sean Kelleher, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
John S. Weisheit  
Public Arbitrator

6-26-02  
Signature Date

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Bertha A. Richardson  
Industry Arbitrator

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Signature Date

July 9, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
John S. Weisheit	-	Public Arbitrator
Bertha A. Richardson	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

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W. Sean Kelleher, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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John S. Weisheit  
Public Arbitrator

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Signature Date

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*Bertha A. Richardson*  
Bertha A. Richardson  
Industry Arbitrator

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*7-1-02*  
Signature Date

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July 9, 2002  
Date of Service (For NASD office use only)