

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between

James Mirabile and Vicki Mirabile
and James Mirabile, MD, PA,
DBA for Women Only

Claimants,

and

Case No. 02-05106

Prudential Securities Inc. and Constance
Bernstein

Respondents.

REPRESENTATION OF PARTIES

Claimants James Mirabile and Vicki Mirabile and James Mirabile, MD, PA, DBA for Women Only were represented by James LaSalle, Esq.

Respondents Prudential Securities Inc. ("PSI") and Constance Bernstein ("Mrs. Bernstein"), hereinafter collectively referred to as "Respondents," were represented by Jeffrey L. Squires, Esq. of Garvey Schubert Barer, Washington, DC.

CASE INFORMATION

The Statement of Claim was filed herein by letter dated September 20, 2002, along with Claimants' Uniform Submission Agreement executed on September 8, 2002.

The Answer was filed by Respondents by letter dated November 12, 2002, along with Uniform Submission Agreements from PSI executed November 4, 2002 and from Mrs. Bernstein executed November 6, 2002.

CASE SUMMARY

Claimants asserted, without specifying particular causes of action, that Mrs. Bernstein generally ignored their efforts to communicate with her and engaged in unauthorized trading practices, and that she refused to permit them access to funds in their securities accounts. Additionally, they asserted that Mrs. Bernstein and PSI placed them in excessively risky investments; that PSI failed to adequately supervise Mrs. Bernstein; and that Respondents refused to transfer the securities in their accounts into a money market fund in July 2002.

Respondents contested all these assertions, and demonstrated to Claimants that Claimants' securities accounts were invested primarily in mutual funds that were consistent with Claimants' stated investment purposes. Respondents denied that they had ever refused to carry out instructions given by Claimants, or had engaged in unauthorized trading. Further, Respondents provided information to Claimants demonstrating that Mrs. Bernstein had not been acting as the financial advisor with respect to Claimants' accounts during July 2002 when, Claimants had alleged, Respondents failed to transfer Claimants' accounts into a money market fund, which the parties have acknowledged was the only conceivably viable claim Claimants attempted to assert.

RELIEF REQUESTED

In their statement of claim Claimants asserted that they had approximately \$400,000 in actual damages; and requested \$100,000 in punitive damages. They made no claim for any additional damages or compensation.

OTHER ISSUES CONSIDERED AND DECIDED

On May 31, 2003 Claimants moved for the dismissal of all claims against Respondent Mrs. Bernstein, with prejudice. On June 15, 2003 Claimant and Respondent PSI entered into a Settlement Agreement, which is attached hereto.

AWARD

In recognition of the dismissal of Respondent Mrs. Bernstein from Claimants' arbitration demand, the June, 2003 Settlement Agreement between Respondent PSI and Claimants, and the motion of both parties for entry of a stipulated award, in lieu of hearing the Panel hereby enters this Award granting the following relief:

- 1) Respondent PSI shall pay to Claimants the sum of Twenty-Four thousand nine hundred ninety-nine dollars and no cents (\$24,999.00).
- 2) Each party shall bear its own costs and expenses, including forum costs.
- 3) The Panel, with all parties' consent, orders the expungement of all reference to the above-captioned arbitration from Mrs. Bernstein's registration records maintained by the NASD Central Registration Depository ("CRD") based upon the inaccurate information contained in the allegation of the Statement of Claim with respect to her, with the understanding that, pursuant to NASD Notice to Members 99-09, Mrs. Bernstein must obtain confirmation of this award from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Any and all relief not specifically addressed herein is 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 = \$300.00

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. Accordingly, Respondent Prudential Securities is assessed the following fees:

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 at \$1,125.00 = \$1,125.00
Pre-hearing conference: March 28, 2003 1 session
Total Forum Fees = \$1,125.00

1. The Panel has assessed \$375.00 of the forum fees to James Mirabile & Vicki Mirabile and James Mirabile, MD, PA, DBA for Women Only.
2. The Panel has assessed \$375.00 of the forum fees to Prudential Securities, Inc.
3. The Panel has assessed \$375.00 of the forum fees to Constance Bertstein.

FEE SUMMARY

1. Claimants James Mirabile & Vicki Mirabile and James Mirabile, MD, PA, DBA for Women Only are jointly and severally liable for:

Initial Filing Fee = \$ 300.00
Forum Fees = \$ 375.00
Total Fees = \$ 675.00
Less payments = \$1,425.00
Refund Due from NASD Dispute Resolution = \$ 750.00

2. Respondent Prudential Securities, Inc. is solely liable for:

Member Fees = \$5,200.00
Forum Fees = \$ 375.00
Total Fees = \$5,575.00
Less payments = \$2,450.00
Balance Due NASD Dispute Resolution = \$3,125.00

3. Respondent Constance Bernstein is solely liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

ARBITRATION PANEL

Hon. Donald B. Clark	-	Public Arbitrator, Presiding Chairperson
Mark S. Foster	-	Public Arbitrator
John K. Cooper	-	Non-Public Arbitrator

Concurring Arbitrators Signatures:

/s/ Donald B. Clark 08/11/03

Hon. Donald B. Clark
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Mark S. Foster 08/14/03

Mark S. Foster, Esq.
Public Arbitrator

Signature Date

/s/ John K. Cooper 08/11/03

John K. Cooper
Non-Public Arbitrator

Signature Date

09/30/03

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

3. Respondent Constance Bernstein is solely liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

ARBITRATION PANEL

Hon. Donald B. Clark	-	Public Arbitrator, Presiding Chairperson
Mark S. Foster	-	Public Arbitrator
John K. Cooper	-	Non-Public Arbitrator

Concurring Arbitrators Signatures:

Donald B. Clark
Hon. Donald B. Clark
Public Arbitrator, Presiding Chairperson

Aug 11, 2003
Signature Date

Mark S. Foster, Esq.
Public Arbitrator

Signature Date

John K. Cooper
Non-Public Arbitrator

Signature Date

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

3. Respondent Constance Bernstein is solely liable for:

<u>Forum Fees</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 375.00

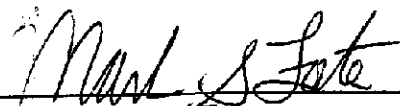
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ARBITRATION PANEL

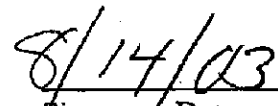
Hon. Donald B. Clark	-	Public Arbitrator, Presiding Chairperson
Mark S. Foster	-	Public Arbitrator
John K. Cooper	-	Non-Public Arbitrator

Concurring Arbitrators Signatures:

Hon. Donald B. Clark
Public Arbitrator, Presiding Chairperson


Mark S. Foster, Esq.
Public Arbitrator

Signature Date


Signature Date

John K. Cooper
Non-Public Arbitrator

Signature Date

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

3. Respondent Constance Bernstein is solely liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

ARBITRATION PANEL

Hon. Donald B. Clark	-	Public Arbitrator, Presiding Chairperson
Mark S. Foster	-	Public Arbitrator
John K. Cooper	-	Non-Public Arbitrator

Concurring Arbitrators Signatures:

Hon. Donald B. Clark
Public Arbitrator, Presiding Chairperson

Signature Date

Mark S. Foster, Esq.
Public Arbitrator

Signature Date


John K. Cooper
Non-Public Arbitrator

8-11-03
Signature Date

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