

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Lisa DePrato

Case Number: 02-06293

Name of the Respondents
Prudential Equity Group, Inc.; and,
Robert E. Holland

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Lisa DePrato, hereinafter referred to as "Claimant": Clifton T. Hutchinson, Esq. and Matthew D. Nielsen, Esq. of the firm of Hughes & Luce, L.L.P., located in Dallas, Texas.

Respondents Prudential Equity Group, Inc. ("Prudential") and Robert E. Holland ("Holland"), hereinafter collectively referred to as "Respondents": Matthew D. Parrott, Esq. of the firm of KMZ Rosenman, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: October 21, 2002.

Claimant signed an undated Uniform Submission Agreement.

Statement of Answer filed by Respondents: December 18, 2002.

Respondent Prudential signed the Uniform Submission Agreement: December 17, 2002.

Respondent Holland signed the Uniform Submission Agreement: December 16, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: violation of the Texas Securities Act; violation of the Federal Securities Laws; breach of fiduciary duty; fraud; violation of the Texas Fraud statute; violation of the Texas Deceptive Trade Practices-Consumer Protection Act; negligence and gross negligence; and, negligent misrepresentation. These causes of action resulted from Respondents' recommendation of the purchase of annuities with a Guaranteed Retirement Income Benefit ("GRIB") and the subsequent purchase of annuities that lacked this feature, but instead had a stepped-up death benefit in spite of Claimant's lack of heirs. As a result, Claimant relied upon Holland's representations that the annuities had the GRIB provision and purchased

higher risk funds than she would have if the annuities had the provision.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's Statement of Claim fails to state a claim upon which relief may be granted;
2. Claimant expressly approved and ratified the acts and transactions complained of and upon which recovery is sought. Claimant is, accordingly, precluded from recovery herein on the principles of ratification and waiver;
3. Claimant failed to use the requisite due diligence in monitoring, trading, managing and handling her accounts. Claimant received confirmation slips for each and every sale and/or purchase of each security in her account within days of the date each transaction occurred. In addition, Claimant received monthly statements of the account at or near the end of each and every month from the date the account was opened that set forth each and every transaction that took place in Claimant's account during the month. Claimant should, therefore, be estopped from making the claims set forth in the Statement of Claim and recovering anything from the Respondents;
4. 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 complaints of transactions. Claimant should therefore be precluded from recovery herein;
5. Claimant failed to mitigate her damages, if any;
6. All risks concerned in investing in securities were fully explained to Claimant and she knowingly, willfully, and voluntarily assumed the risks of her investments;
7. Claimant's actions are barred by the principle of laches;
8. Claimant by her conduct has waived any and all rights she may have against Respondents; and,
9. Any losses that Claimant incurred resulted from business and market price fluctuations beyond the control and responsibility of the Respondents.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages

In excess of \$150,000.00, or an amount consisting of the initial investment in the policies with the minimum five (5) per cent annual return that should have been earned since the purchase date;

Interest

Pre-award and post-award interest as determined by the Panel;

Attorneys' Fees

As determined by the Panel;

Other Costs

As determined by the Panel;

Other Monetary/Non-Monetary Relief if any:

including arbitration fees and expert fees;

As an alternative to damages, rescission of the annuity policies at issue with return of the full purchase price, and such other relief as the Claimant be entitled.

Respondents requested that Claimant take nothing on her claim, that they receive the costs of suit herein and for such other and further relief as the Panel deemed just and proper.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the pre- and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The rescission of the purchase of the three annuities without the guaranteed retirement income benefit provision [Two (2) Prudential and One (1) Kemper] is granted. Accordingly, Respondents Prudential Equity Group, Inc. and Robert E. Holland are jointly and severally liable for and shall pay to the Claimant, Lisa DePrato, the sum of \$345,000.00, plus interest at the rate 10% per annum to accrue from the date of purchase of the three annuities until the securities are transferred to the Respondents;
2. Upon receipt of the sum enumerated in paragraph one (1) above, Claimant Lisa DePrato shall immediately cause her interest in the three above noted annuities to be transferred to Respondents Prudential Equity Group, Inc. and Robert E. Holland;
3. In addition, Respondents Prudential Equity Group, Inc. and Robert E. Holland are jointly and severally liable for and shall pay to the Claimant, Lisa DePrato, the sum of \$95,320.50 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the pre-hearing briefs and the post-hearing submissions filed by the parties, as well as Texas Civil Remedies Code 38, and determined that authority existed for an award of attorneys' fees to the Claimant;
4. Furthermore, Respondents Prudential Equity Group, Inc. and Robert E. Holland are jointly and severally liable for and shall pay to the Claimant, Lisa DePrato, the sum of \$9,348.00 as witness fees;
5. Any remaining costs of arbitration, including additional attorneys' fees, shall be borne by the party incurring the cost; and,
6. Any and all relief not specifically addressed herein, including treble damages, 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 Equity Group, Inc. is a party and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: October 10, 2003 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00
Pre-hearing conferences: June 2, 2003 1 session
September 15, 2003 1 session

Seven (7) Hearing sessions @ \$1,125.00 = \$ 7,875.00
Hearing Dates: October 15, 2003 2 sessions
October 16, 2003 3 sessions
October 17, 2003 2 sessions

Total Forum Fees = \$10,575.00

The Panel has assessed \$562.50 of the forum fees to Claimant Lisa DePrato, \$5,006.25 of the forum fees to Respondent Prudential Equity Group, Inc., individually, and \$5006.25 of the forum fees to Respondent Robert E. Holland, individually.

SEE SUMMARY

Claimant Lisa DePrato is solely liable for:

Initial Filing Fee = \$ 300.00
Forum Fees = \$ 562.50

Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 562.50

Respondent Prudential Equity Group, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,006.25
Total Fees	= \$10,206.25
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,006.25

Respondent Robert E. Holland is solely liable for:


Forum Fees	= \$ 5,006.25
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,006.25

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

ARBITRATION PANEL

D. Richard Dennis - Public Arbitrator, Presiding Chairperson
Kathy L. Eisenmenger, Esq. - Public Arbitrator
Scott O. Fertig - Non-Public Arbitrator

Concurring Arbitrators' Signatures


D. Richard Dennis
Public Arbitrator, Presiding Chairperson

12-04-03
Signature Date

Kathy L. Eisenmenger, Esq.
Public Arbitrator

Signature Date

Scott O. Fertig
Non-Public Arbitrator

Signature Date

12/9/03 MM
Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 562.50

Respondent Prudential Equity Group, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 5,006.25</u>
Total Fees	= \$10,206.25
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,006.25

Respondent Robert E. Holland is solely liable for:

Forum Fees	= \$ 5,006.25
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,006.25

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

ARBITRATION PANEL

D. Richard Dennis - Public Arbitrator, Presiding Chairperson
Kathy L. Eisenmenger, Esq. - Public Arbitrator
Scott O. Fertig - Non-Public Arbitrator

Concurring Arbitrators' Signatures

D. Richard Dennis
Public Arbitrator, Presiding Chairperson

Signature Date

Kathy L. Eisenmenger
Kathy L. Eisenmenger, Esq.
Public Arbitrator

December 2, 2003
Signature Date

Scott O. Fertig
Non-Public Arbitrator

Signature Date

12/9/03 MM
Date of Service (For NASD Dispute Resolution office use only)

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Less payments	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 562.50

Respondent Prudential Equity Group, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,006.25
Total Fees	= \$10,206.25
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,006.25

Respondent Robert E. Holland is solely liable for:

Forum Fees	= \$ 5,006.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,006.25

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

ARBITRATION PANEL

D. Richard Dennis - Public Arbitrator, Presiding Chairperson
 Kathy L. Eisenmenger, Esq. - Public Arbitrator
 Scott O. Fertig - Non-Public Arbitrator

Concurring Arbitrators' Signatures

 D. Richard Dennis
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Kathy L. Eisenmenger, Esq.
 Public Arbitrator

 Signature Date


 Scott O. Fertig
 Non-Public Arbitrator

12/2/2003
 Signature Date

12/9/03 man
 Date of Service (For NASD Dispute Resolution office use only)