

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

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In the Matter of the Arbitration Between:

Thomas A. Gaipa, Claimant v. Prudential Securities Incorporated, David H. Rascoe, and  
Eugene P. Ingargiola, Respondents

Case Number: 02-06577

Hearing Site: San Diego, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Robert Scott Dreher, Esq.  
Dreher Law Firm  
San Diego, California

For Respondents:

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

**CASE INFORMATION**

Statement of Claim filed: October 28, 2002

Claimant's Uniform Submission Agreement signed: October 31, 2002

Joint Statement of Answer filed by Respondents Prudential Securities Incorporated, David H. Rascoe, and Eugene P. Ingargiola: January 21, 2003

Respondent Prudential Securities Incorporated's Uniform Submission Agreement signed:  
January 17, 2003

Respondent David H. Rascoe's Uniform Submission Agreement signed: April 9, 2003

Respondent Eugene P. Ingargiola's Uniform Submission Agreement signed: January 28, 2003

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, negligence, breach of contract, and unfair business practices. The dispute involved the purchase and/or sale of various funds.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$375,000.00 in damages and restitution, along with a reasonable rate of return of 7%, along with recovery of all fees and interest, and commissions and other fees paid to Prudential Securities Incorporated.

At the conclusion of the hearing, Claimant's counsel presented Exhibit C-52, which sets forth on the last page computations of damages, and stated that Claimant claimed against all Respondents compensatory damages equal to either: (1) \$242,621.00 plus 10% simple interest of \$84,917.00 for 3.5 years, equal to a total \$327,178.00, or (2) \$226,305.00 plus 10% simple interest of \$79,206.75 for 3.5 years, equal to a total of \$305,511.75, depending on which two theories of damages the panel might adopt.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety. Additionally, Prudential Securities Incorporated requested that all costs be awarded in their favor. Moreover, Respondents David H. Rascoe and Eugene P. Ingargiola requested the Panel recommend the expungement of all references to this matter from their individual CRD records.

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

On October 31, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 2, 2002, Respondents Prudential Securities Incorporated, David H. Rascoe, and Eugene P. Ingargiola's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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) Claimant's claims are denied in their entirety.
- 2) Claimant's claims are dismissed with prejudice as to all Respondents.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David H. Rascoe registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent David H. Rascoe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Eugene P. Ingargiola registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Eugene P. Ingargiola must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) 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 Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: April 1, 2003 1 session	
Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearings: October 14, 2003 2 sessions	
October 15, 2003 2 sessions	
October 16, 2003 2 sessions	
October 17, 2003 2 sessions	

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<b>Total Forum Fees</b>	<b>= \$10,125.00</b>
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The Panel assessed \$10,125.00 of the forum fees to Respondent Prudential Securities Incorporated.

**Fee Summary**

1. Claimant Thomas A. Gaipa is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= <u>\$(1,425.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>
  
2. Respondent Prudential Securities Incorporated is charged with the following fees and costs:


Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= <u>\$10,125.00</u>
Total Fees	= \$15,325.00
<u>Less payments</u>	= <u>\$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$10,125.00</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**

Franklin G. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Stephen R. Clark	-	Public Arbitrator
J. A. Dutcher, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Franklin G. Allen, Esq.  
Chair, Public Arbitrator

  
Signature Date

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Stephen R. Clark  
Public Arbitrator

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

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J. A. Dutcher, CPA  
Non-Public Arbitrator

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Signature Date

  
Date of Service

**ARBITRATION PANEL**

Franklin G. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Stephen R. Clark	-	Public Arbitrator
J. A. Dutcher, CPA	-	Non-Public Arbitrator

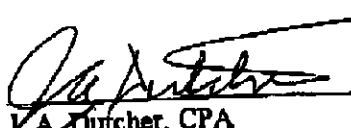
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Franklin G. Allen, Esq.  
Chair, Public Arbitrator

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Signature Date

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Stephen R. Clark  
Public Arbitrator

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

  
J. A. Dutcher, CPA  
Non-Public Arbitrator

10/21/03  
Signature Date

October 21, 2003  
Date of Service