

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

John W. Pribyl

and

02-06707  
Oklahoma City, Oklahoma

Name of Respondent

Prudential Securities, Inc. n/k/a  
Prudential Equity Group, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

John W. Pribyl ("Claimant") was represented by Allen Campbell, Esq., Kirk & Chaney, Oklahoma City, Oklahoma.

Prudential Equity Group, Inc. ("Respondent") was represented by Timothy A. Carney, Esq., Gable & Gotwals, Tulsa, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 4, 2002. The Submission Agreement of Claimant John W. Pribyl was signed on or about November 4, 2002. The Claimant's submitted an Amended Statement of Claim on or about October 17, 2003. Claimant's Reply to the Counterclaim was filed on or about February 10, 2003. Claimant's Motion to Amend was filed on or about September 30, 2003. Claimant's Responses to Respondent's Second Motion for Partial Dismissal and its Supplement to Pre-hearing Brief on or about January 22, 2004.

The Statement of Answer, Counterclaim and Defenses was filed by Respondent Prudential Equity Group, Inc. on or about January 30, 2003. The Respondent's Motion to Dismiss Claim of Defamation and Allegations That Claimant Could Not Be, or Was Not, Terminated for Cause was filed on or about January 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of employment contract; commission compensation; libel and slander on U-5.

Claimant specifically stated the following:

1. The entirety of the agreements, along with Prudential's representations and internal policies and practices, reveal that Pribyl could be fired only "for cause," and Pribyl was not fired for cause.
2. Pribyl was fraudulently induced to enter the agreements if Prudential maintains that he could be fired without significant cause and, as a result of the fraud, Pribyl lost much of the value to him of the Cohlma/Pribyl book of business.
3. Prudential has been unjustly enriched by its attempt to save about \$450,000.00 from the agreed purchase price of Cohlma's and Pribyl's book of business.
4. Prudential violated the implied covenant to act in good faith that applies to the performance of all contracts.
5. Prudential is estopped to claim that it could fire Pribyl for no reason by the doctrine of promissory estoppel.
6. Prudential cannot defend or make a claim based upon its interpretation of the agreements because this interpretation renders the agreements unenforceable because they are rendered illusory and unconscionable.
7. Prudential defamed Mr. Pribyl's business and personal reputation.

Unless specifically admitted in its Answer, Respondent Prudential Equity Group Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: Pribyl has failed to state a claim upon which relief can be granted; Pribyl has failed to mitigate his damages; Any damages suffered by Pribyl are a result of his own actions, and not the result of any action or inaction by PSI (Prudential Equity Group Inc.); Pribyl cannot recover against PSI because of his unclean hands; All actions taken by PSI were taken for legitimate, non-discriminatory business reasons; Any and all actions taken by PSI were taken in good faith and without reckless disregard for Pribyl; Pribyl is not entitled to attorney's fees or costs; Pribyl is not entitled to punitive damages; Pribyl was an employee at will; Pribyl's breach of contract claim fails for failure of consideration; Pribyl has failed to fulfill all conditions precedent to the bringing of this proceeding; Any statements made by PSI on the "Uniform Termination Notice for Securities Industry Registration" are privileged.

Respondent's Prudential Equity Group Inc.'s Counterclaim was filed to collect from the Claimant Pribyl the amount owed on a promissory note. Respondent specifically stated the following:

As Pribyl's employment was terminated on July 8, 2002, the amount of the Note still owing, along with the accrued interest, became due and owing as of that date. Pribyl has not made the last two (2) scheduled payments, and therefore owes PSI (Prudential Equity Group Inc.). When he signed the Note, Pribyl expressly understood and agreed that in the event of default of any of his obligations under the Note, he would be responsible for all costs of collection, including reasonable

attorneys' fees. Pribyl's termination is an event of default under the Note, and the filing fee for this claim (and any future form fees), as well as legal fees incurred in this matter, are "costs of collection" within the terms of the Note.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$3,000,000.00 for compensatory damages, punitive damages, interest, costs and attorney's fees.

Respondents requested that the claims asserted against them be denied in its entirety and requested that it be granted an award in the amount of \$344,060.77, plus accrued interest. They also requested post-judgment interest, costs, forum fees, attorney's fees and any other such relief as the Arbitrators deem fit.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel granted Claimant's Agreed Motion to Amend Statement of Claim.

Claimant's Pre-hearing Brief was filed on or about November 5, 2003.

Respondent's Pre-hearing Brief was filed on or about November 5, 2003. Respondent's Supplement to the Pre-Hearing Brief was filed on or about January 20, 2004.

The Panel reviewed Respondent's Motion for Partial Dismissal and Claimant's Response. The Motion was overruled.

Respondent Prudential Equity Group, Inc. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the hearing, the Respondent's argued their Motion to Dismiss. The Motion to Dismiss was overruled by the Panel.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted in this matter shall be and are hereby denied.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties should each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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	= \$500.00
Counter claim filing fee	= \$1,000.00

#### **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. In this matter, the member firm is Prudential Equity Group, Inc.

Member surcharge	\$	2,800.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,000.00
Total Member Fees	\$	<u>8,550.00</u>

### **Forum Fees and Assessments**

The Arbitration 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:

1	Pre-hearing session with a single arbitrator	x	\$450.00	\$	450.00
	August 20, 2003	1	session		
1	Pre-hearing sessions with Panel	x	1,200.00	\$	1,200.00
	July 24, 2003	1	session		
14	Hearing sessions	x	1,200.00	\$	16,800.00
	November 18, 2003	2	sessions		
	November 19, 2003	3	sessions		
	November 20, 2003	2	sessions		
	January 20, 2003	2	sessions		
	January 21, 2003	3	sessions		
	January 22, 2003	2	sessions		
	Total Forum Fees			\$	18,450.00

The Arbitration Panel has assessed \$9,225.00 of the forum fees to John W. Pribyl.  
The Arbitration Panel has assessed \$9,225.00 of the forum fees to Prudential Equity Group, Inc.

### **Fee Summary**

Claimant, John W. Pribyl, shall be and hereby is liable for:

Initial Filing Fee	= \$	500.00
<u>Forum Fees</u>	= \$	9,225.00
Total Fees	= \$	9,725.00
<u>Less payments</u>	= \$	-1,700.00
Balance Due NASD Dispute Resolution	= \$	8,025.00

Respondent, Prudential Equity Group, Inc., shall be and hereby is liable for:

Counterclaim Filing Fee	= \$	1,000.00
Member Fees	= \$	8,550.00
<u>Forum Fees</u>	= \$	9,225.00
Total Fees	= \$	18,775.00
<u>Less payments</u>	= \$	-10,675.00
Balance Due NASD Dispute Resolution	= \$	8,100.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Robert Steven Haught, Esq. - Public Arbitrator, Presiding Chair

Edwin E. O'Brien - Public Arbitrator

R. Randall Richison - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Robert Steven Haught, Esq.

Robert Steven Haught, Esq.

Public Arbitrator, Presiding Chair

2/25/04

Signature Date

/s/ Edwin E. O'Brien

Edwin E. O'Brien

Public Arbitrator

2/24/04

Signature Date

/s/ R. Randall Richison

R. Randall Richison

Non-Public Arbitrator

2/24/04

Signature Date

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Edwin E. O'Brien - Public Arbitrator  
R. Randall Richison - Non-Public Arbitrator

**Concurring Arbitrators:**

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Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

2-25-04  
Signature Date

Edwin E. O'Brien  
Edwin E. O'Brien  
Public Arbitrator

                      
Signature Date

R. Randall Richison  
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Non-Public Arbitrator

                      
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Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

*Edwin E. O'Brien*

Edwin E. O'Brien  
Public Arbitrator

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Signature Date

*Feb. 24, 2007*

Signature Date

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R. Randall Richison  
Non-Public Arbitrator

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Signature Date



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Edwin E. O'Brien - Public Arbitrator

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R. Randall Richison  
Non-Public Arbitrator

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2-24-04  
Signature Date