

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

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In the Matter of the Arbitration Between:

Agnes M. O'Neill, Claimant v. Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC),  
Mark W. Sloan, Mark Ewing, and Charles J. McFadden, Respondents

Case Number: 02-06790

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

J. Kevin O'Neill  
Lafayette, California

For Respondents Prudential Securities, Inc.  
(n.k.a. Prudential Equity Group, LLC) and  
Charles J. McFadden:

Charles B. LaChaussee, Esq.  
Prudential Equity Group, LLC.  
San Francisco, California

For Respondent Mark W. Sloan:

Mark W. Sloan  
In Propria Persona  
Rushville, Indiana

For Respondent Mark Ewing:

Mark Ewing  
In Propria Persona  
Sagle, Idaho

**CASE INFORMATION**

Statement of Claim filed: November 8, 2002

Claimant's Uniform Submission Agreement signed: October 18, 2002

Joint Statement of Answer filed by Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC), and Charles J. McFadden: January 27, 2003

Statement of Answer by Respondent Mark W. Sloan received: February 11, 2003

Statement of Answer filed by Respondent Mark Ewing received: April 3, 2003

Respondent Prudential Securities, Inc.'s (n.k.a. Prudential Equity Group, LLC) Uniform Submission Agreement signed: January 27, 2003

Respondent Prudential Securities, Inc.'s (n.k.a. Prudential Equity Group, LLC) revised Uniform Submission Agreement signed: August 8, 2003

Respondent Charles J. McFadden's Uniform Submission Agreement signed: August 10, 2003

### **CASE SUMMARY**

Claimant alleged breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, unauthorized trading, omission of facts, and unsuitability, involving various unspecified securities.

Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) and Charles J. McFadden denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Respondent Mark W. Sloan denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent Mark Ewing denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$97,549.00 in compensatory damages, \$29,000.00 in interest, \$397,849.00 in punitive damages, and costs, including attorney's fees.

Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) and Charles J. McFadden requested dismissal of Claimant's Statement of Claim in its entirety, costs, and expungement of all reference to the above-captioned arbitration from the registration record of Charles J. McFadden maintained by the NASD Central Registration Depository.

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

Respondents Mark W. Sloan and Mark Ewing did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On June 26, 2003, Claimant dismissed Respondents Mark W. Sloan and Mark Ewing without prejudice.

On July 3, 2003, 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 January 23, 2003, counsel for Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) and Charles J. McFadden 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 25, 2004, Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) and Charles J. McFadden filed a Motion to Dismiss for failure to prosecute. On July 15, 2004, Claimant filed a response to the Motion to Dismiss. On July 27, 2004, the Panel and parties held a telephonic pre-hearing conference to hear oral arguments on the motion. After due deliberation, the Panel denied Respondents Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) and Charles J. McFadden's Motion to Dismiss.

At the hearing on September 27, 2004, the Panel was informed by the parties that they had agreed to a stipulated settlement that included expungement of Respondent Charles J. McFadden's registration records maintained by NASD Central Registration Depository ("CRD"). The panel informed the parties that it could not recommend expungement without knowing what Respondent Charles J. McFadden was accused of and the veracity of such claims. The respondents then took the settlement offer off the table and the hearing commenced.

During the morning hearing session on September 28, 2004, it became clear to the panel that they now knew enough of the allegations and their veracity. The Panel offered the parties the opportunity to confer and determine whether they desired to reinstitute their settlement agreement. They were not told how the Panel would react to the expungement request, but it was

fairly obvious that Respondent Charles J. McFadden was "not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds". The issue of Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) liability remained. After the parties announced they had reached their settlement, the Chair polled the Panel and the recommendation for expungement was unanimous.

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 and the parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have entered into a Confidential Settlement Agreement.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Charles J. McFadden's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Charles J. McFadden must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs and expenses, including attorney's fees.
4. 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, Inc. (n.k.a. Prudential Equity Group, LLC) is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<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 Chair or Panel. The following fees are assessed:

2 Pre-hearing conference sessions @ \$ 1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:	
September 26, 2003	1 session
July 27, 2004	1 session
3 Hearing sessions @ \$ 1,125.00/session	= \$ 3,375.00
Hearings:	
September 27, 2004	2 sessions
September 28, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>
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Respondent Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) agreed to pay for all forum fees beyond what Claimant had already paid to NASD when filing this claim. Therefore:

1. The Panel assessed \$1,125.00 of the forum fees to Claimant Agnes M. O'Neill.
2. The Panel assessed \$4,500.00 of the forum fees to Respondent Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC).

**FEE SUMMARY**

1. Claimant Agnes M. O'Neill is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ (1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent Prudential Securities, Inc. (n.k.a. Prudential Equity Group, LLC) is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 9,700.00
Less payments	= \$ (6,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,250.00</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.

**PARTIES' SIGNATURES**

*K. Kevin O'Neill*  
K Kevin O'Neill  
Claimant's Representative

10-6-04  
Signature Date

Charles B. LaChaussee, Esq.  
Counsel for Respondents Prudential Securities, Inc.  
(n.k.a. Prudential Equity Group, LLC) and  
Charles J. McFadden

                      
Signature Date

**PARTIES' SIGNATURES**

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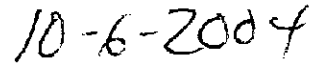
J. Kevin O'Neill  
Claimant's Representative

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Signature Date



Charles B. LaChaussee, Esq.  
Counsel for Respondents Prudential Securities, Inc.  
(n.k.a. Prudential Equity Group, LLC) and  
Charles J. McFadden



Signature Date



**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Beverly A. Fleming	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

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Beverly A. Fleming  
Public Arbitrator

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Signature Date

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Nicholas J. Caputo  
Non-Public Arbitrator

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Signature Date

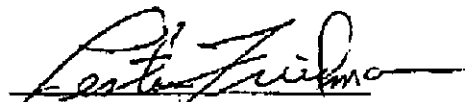
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Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Beverly A. Fleming	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Lester Friedman, Esq.  
Chair, Public Arbitrator

10/13/04  
Signature Date

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Beverly A. Fleming  
Public Arbitrator

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

\_\_\_\_\_  
Nicholas J. Caputo  
Non-Public Arbitrator

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Signature Date

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Date of Service

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Lester Friedman, Esq.  
Beverly A. Fleming  
Nicholas J. Caputo

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Public Arbitrator

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Signature Date

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Nicholas J. Caputo  
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Beverly A. Fleming	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

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Beverly A. Fleming  
Public Arbitrator

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Signature Date

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Nicholas J. Caputo  
Non-Public Arbitrator

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10/13/04  
Signature Date

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10/13/04  
Date of Service