

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

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In the Matter of the Arbitration Between:

John Murray and Patricia Murray and The Murray Family Trust, UA DTD 08/19/93 Claimant v.  
Prudential Securities, Inc., Respondent

Case Number: 02-07528

Hearing Site: Los Angeles, California

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Nature of Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Ryan K. Bakhtiari, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent:

Christopher J. Kondon, Esq.  
Kilpatrick & Lockhart, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: December 12, 2002

Claimants' Uniform Submission Agreement signed: December 12, 2002

Statement of Answer filed by Respondent: April 14, 2002

**CASE SUMMARY**

Claimants alleged breach of fiduciary duty, fraud, failure to supervise, elder abuse, unfair or deceptive practices against senior citizens, violation of federal and state securities laws, and violation of NASD and NYSE rules.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$182,000.00 in compensatory damages, disgorgement, lost opportunity costs of what \$1,000,000.00 would have earned if suitably invested, treble damages in accordance with California Civil Code §13345, unspecified punitive damages, pre and post judgment interest, and costs and attorney's fees in accordance with California Welfare and Institutions Code §§ 15610.27, 15610.30 and 15657.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and asserted affirmative defenses.

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

On February 2, 2003, Claimant and Claimants' 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.

Pursuant to the Code of Arbitration Procedure ("the Code") IM-10100, the waiver of the Claimants 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.

Respondent Prudential Securities, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim and appeared at the hearing through counsel is bound by the determination of the Panel on all issues submitted.

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) Respondent Prudential Securities, Inc. is liable to and shall pay Claimants the sum of \$158,336.00 in compensatory damages.
- 2) Respondent Prudential Securities, Inc. is liable to and shall pay Claimants interest in the amount of 10% per annum on \$158,336.00 from November 1, 2002 until December 19, 2003.
- 3) Respondent Prudential Securities, Inc. is liable to and shall pay Claimants \$375.00 as

reimbursement for Claimants' arbitration claim filing fee.

- 4) Respondent Prudential Securities, Inc. is liable to and shall pay Claimants' the sum of \$63,000.00 in attorney's fees, pursuant to Herbert Coutee, Lorine Coutee v. Barington Capital Group, 2003 WL 21730625 (9th Cir.(Cal.) July 28, 2003) and in accordance with the parties' joint request for attorney's fees.
- 5) 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	= \$ 375.00
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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. is a party and is assessed the following fees:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

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

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

(3) Pre-hearing conference session(s) with the Chair @ \$ 450.00/session	= \$ 1,350.00
Pre-hearing conferences:	
November 3, 2003	1 session
December 10, 2003	1 session
December 12, 2003	1 session

(2) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: August 7, 2003 1 session	
September 8, 2003 1 session	
(10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearings: December 15, 2003 2 sessions	
December 16, 2003 2 sessions	
December 17, 2003 2 sessions	
December 18, 2003 2 sessions	
December 19, 2003 2 sessions	
<b>Total Forum Fees</b>	<b>= \$15,750.00</b>

1. The Panel assessed \$15,750.00 of the forum fees to Respondent Prudential Securities, Inc.

#### Fee Summary

1. Claimants The Murray Family Trust UA dated 8/19/93, John Murray and Patricia Murray are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$(1,200.00)</b>

2. Respondent Prudential Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$15,750.00</u>
<b>Total Fees</b>	<b>= \$22,750.00</b>
<u>Less payments</u>	<u>= \$ (7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$15,750.00</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**

Douglas J. Rovens, Esq.	-	Public Arbitrator, Presiding Chair
Sherry L. Robinson	-	Public/Non-Public Arbitrator
Dawn M. Kirchner, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Douglas J. Rovens, Esq.  
Chair, Public Arbitrator

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Signature Date

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Sherry L. Robinson  
Public Arbitrator

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Signature Date

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Dawn M. Kirchner, CFP  
Non-Public Arbitrator

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Signature Date

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Date of Service

**ARBITRATION PANEL**

Douglas J. Rovens, Esq.	-	Public Arbitrator, Presiding Chair
Sherry L. Robinson	-	Public/Non-Public Arbitrator
Dawn M. Kirchner, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Douglas J. Rovens, Esq.  
Chair, Public Arbitrator

12/23/03  
Signature Date

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Sherry L. Robinson  
Public Arbitrator

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Signature Date

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Dawn M. Kirchner, CFP  
Non-Public Arbitrator

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Signature Date

NASD Dispute Resolution  
Arbitration No. 02-07528  
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Douglas J. Rovens, Esq.  
Chair, Public Arbitrator

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

Sherry Robinson  
Sherry L. Robinson  
Public Arbitrator

12/22/03  
Signature Date

\_\_\_\_\_  
Dawn M. Kirchner, CFP  
Non-Public Arbitrator

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Signature Date

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Chair, Public Arbitrator

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Signature Date

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Sherry L. Robinson  
Public Arbitrator

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Signature Date

  
Dawn M. Kirchner, CFP  
Non-Public Arbitrator

22 Dec 2003  
Signature Date

Dec 23, 2003  
Date of Service