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

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In the Matter of the Arbitration Between:

Names of the Claimants

William Gabrilowitz, Trustee of the William Gabrilowitz  
Trust U/A/D 01/26/88 and Debra Gabrilowitz,  
Trustee of the Ann Gabrilowitz Trust U/A/D 01/26/88

Case Number: 02-07839

Names of the Respondents

Prudential Equity Group, Inc. and Alan Marshall Kestin

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member Firm and Associated Person.

**REPRESENTATION OF PARTIES**

For William Gabrilowitz, Trustee of the William Gabrilowitz Trust U/A/D 01/26/88 ("W. Gabrilowitz") and Debra Gabrilowitz, Trustee of the Ann Gabrilowitz Trust U/A/D 01/26/88 ("D. Gabrilowitz"), hereinafter referred to as "Claimants": Richard A. Stephens, Esq., Law Office of Richard A. Stephens, Boca Raton, Florida.

For Prudential Equity Group, Inc. ("Prudential") and Alan Marshall Kestin ("Kestin"), hereinafter collectively referred to as "Respondents": Marc S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 30, 2002.

Claimant W. Gabrilowitz signed the Uniform Submission Agreement: December 27, 2002.

Claimant D. Gabrilowitz signed the Uniform Submission Agreement: June 20, 2003.

Statement of Answer and Motion to Add Proper Party filed by Respondents on or about: March 31, 2003.

Respondent Prudential signed the Uniform Submission Agreement: March 25, 2003.

Respondent Kestin signed the Uniform Submission Agreement: March 14, 2003.

Claimant's Stipulated Concurrence with Respondents' Motion to Add Proper Party and First Amended Statement of Claim filed on or about: June 19, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Chapter 517 of the Florida Statutes and Chapter 3E-600.002(2) of the Florida Administrative Code; common law fraud; breach of fiduciary duty; fraud under Sections 10(b) and 15(c)(1)(a) of the Securities Exchange Act and S.E.C. Rules 10(b)-5 and 10(b)-3; violation of NASD Conduct Rule 2120: manipulative, deceptive and fraudulent devices; violation of IM-2310-2 under NASD Conduct Rule 2310: fair dealing and fraudulent activity; violation of NASD Conduct Rule 2110: commercial honor and principles of trade; gross negligence; breach of contract; violation of NASD Conduct

Rule 3010(a); negligent supervision; respondeat superior liability; and "controlling persons" liability under section 20(a) of the Securities Exchange Act. The causes of action relate to Respondents' failure to sell shares of Kmart stock in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$750,000.00; punitive damages of \$250,000.00 with a short explanation of the basis for the punitive damage Award; attorneys' fees; pre-judgment interest at the legal rate; costs including filing fees, hearing session fees and expert witness fees; referral to NASD Regulation; if the Panel renders a judgment based on fraud, that "actual fraud" and/or "fraud while acting in a fiduciary capacity" be mentioned specifically as the basis in any written judgment to survive any discharge in bankruptcy (11 U.S.C. Sec 523(a)) if any Respondent files a bankruptcy petition; and such further relief the Panel deemed just and appropriate.

Respondents requested dismissal of all claims; attorneys' fees; and expungement of this claim from Respondent Kestin's registration records maintained by the NASD Central Registration Depository ("CRD").

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

On or about July 24, 2003 the Panel issued an Order which granted Respondents' Motion to Add Proper Party and accepted Claimant's First Amended Statement of Claim which added D. Gabrilowitz as a Claimant.

During the evidentiary hearing, on or about January 6, 2004, Claimants made an oral request to amend the pleadings to conform to the evidence. The Panel granted the request.

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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety.

The parties are to bear their own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, Claimants' claims of relief pursuant to Chapter 517 of the Florida Statutes, and Respondent Kestin's request for expungement, are denied.

### FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 375.00

#### 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, Prudential is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00 per session	= \$2,400.00
Pre-hearing conferences: July 22, 2003 1 session	
December 19, 2003 1 session	
Four (4) Hearing sessions @ \$1,200.00 per session	= \$4,800.00
Hearing Dates: January 6, 2004 2 sessions	
January 7, 2004 2 sessions	
Total Forum Fees	= \$7,200.00

The Panel assessed the total forum fees of \$7,200.00 to Claimants, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$7,200.00</u>
Total Fees	= \$7,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$6,000.00

Respondent Prudential is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

<i>Michael Lukasievich, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Steven R. Reininger, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Steven A. Hurst, CFP</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Michael Lukasievich, Esq.  
Public Arbitrator, Presiding Chairperson

01/22/04

Signature Date

/s/

Steven R. Reininger, Esq.  
Public Arbitrator

01/20/04

Signature Date

/s/

Steven A. Hurst, CFP  
Non-Public Arbitrator

01/21/04

Signature Date

01/26/04

Date of Service (For NASD Dispute Resolution office use only)

The Panel assessed the total forum fees of \$7,200.00 to Claimants, jointly and severally.

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Steven R. Reininger, Esq.	-	Public Arbitrator
Steven A. Hurst, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

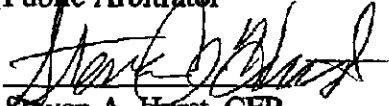


Michael Lukasievich, Esq.  
Public Arbitrator, Presiding Chairperson

1-22-04

Signature Date

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Steven R. Reininger, Esq.  
Public Arbitrator

  
\_\_\_\_\_  
Steven A. Hurst, CFP  
Non-Public Arbitrator

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Signature Date

1-21-09  
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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 02-07839  
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Steven R. Reininger, Esq.  
Public Arbitrator

Steven A. Hurst, CFP  
Non-Public Arbitrator

1-20-04

Signature Date

Signature Date

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