

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

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In the Matter of the Arbitration Between:

Charles Faso (Claimant) v. Prudential Securities, Inc. n/k/a Prudential Equity Group, Inc.  
(Respondent)

Case Number: 03-00260

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customer v. Member.

**REPRESENTATION OF PARTIES**

Claimant Charles Faso ("Faso") hereinafter referred to as "Claimant": Donald G. McGrath, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondent Prudential Securities, Inc. n/k/a Prudential Equity Group, Inc. ("Prudential") hereinafter referred to as "Respondent": Gabrielle L. Gould, Esq., Kramer Levin Naftalis & Frankel, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 8, 2003.

Claimant signed the Uniform Submission Agreement: January 4, 2003.

Statement of Answer filed by Respondent on or about: April 4, 2003.

Respondent signed the Uniform Submission Agreement: March 31, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: directing and effecting unsuitable trades in the account; making recommendations and effecting trades without adequate basis therefore; misrepresenting or omitting to state material facts; engaging in deceptive acts and practices; failing to follow customer directives; breach of contract; breach of duty; violations of federal and state securities laws; violations of state consumer protection laws; breach of fiduciary duty; and violations of rules and regulations of NASD and various exchanges. Claimant's claim involved the purchase of various technology securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$380,665.00; punitive damages; costs, expenses, and disbursements, including reasonable attorneys' fees, pursuant to New York General Business Law §349; and for such other and further relief as the arbitration panel deems just and proper.

Respondent requested that each and every claim be dismissed in all respects and that the Panel award it such other and further relief as is just and proper, including costs and attorneys' fees.

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

At the beginning of the hearing on June 16, 2004, Claimant made a motion to postpone the start of the hearing, which was denied. Claimant made a second motion to start the proceeding at 2:00PM, which was granted.

Respondent made a motion to dismiss the claims at the close of Claimant's case. The Panel reserved decision and asked Respondent to proceed without prejudice.

Claimant made a motion to sequester Respondent's expert witness during the cross-examination of David Flanders, which was denied.

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.

### **AWARD**

After considering the pleadings, and 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:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein is denied.

### **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	= \$ 300.00
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#### **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 Equity Group, Inc. f/k/a Prudential Securities, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
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Pre-hearing conference:	November 19, 2003	1 session
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Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
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Hearing Dates:	June 15, 2004	2 sessions
	June 16, 2004	2 sessions
	June 17, 2004	2 sessions

Total Forum Fees	= \$7,875.00
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1. The Panel has assessed \$6,300.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,575.00 of the forum fees against Respondent.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$6,300.00
Total Fees	= \$6,600.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$5,175.00

2. Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$1,575.00</u>
Total Fees	= \$6,775.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,575.00

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

ARBITRATION PANEL

Richard D. Rosenbloom, Esq.	-	Public Arbitrator, Presiding Chairperson
Chet Robie, Ph.D.	-	Public Arbitrator
Gust D. Servis	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

Richard D. Rosenbloom  
Richard D. Rosenbloom, Esq.  
Public Arbitrator, Presiding Chairperson

6-25-04  
Signature Date

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Chet Robie, Ph.D.  
Public Arbitrator

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

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Gust D. Servis  
Non-Public Arbitrator

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

July 1, 2004

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Date of Service (For NASD Dispute Resolution use only)

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June 22 2004  
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Signature Date

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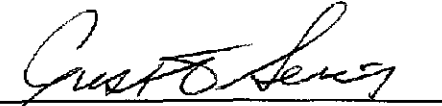
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6-24-04  
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Signature Date

July 1, 2004  
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Date of Service (For NASD Dispute Resolution use only)