

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

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In the Matter of the Arbitration Between:

Frank M. Lobacz (Claimant) v. Prudential Equity Group, LLC f/k/a Prudential Securities, Inc.,  
David A. Reiss, and Donald S. Reiss (Respondents)

Case Number: 03-00414

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Frank M. Lobacz ("Lobacz") hereinafter referred to as "Claimant": John E. Lawlor, Esq., Mineola, NY.

Respondent Prudential Equity Group, LLC, f/k/a Prudential Securities, Inc. ("Prudential"): Brian F. McDonough, Esq., Drinker Biddle & Reath, LLP, New York, NY.

Respondents David A. Reiss ("David Reiss") and Donald S. Reiss ("Donald Reiss") appeared *pro se* through David Reiss. Previously represented by: Howard R. Elisofon, Esq., Herrick, Feinstein, LLP, New York, NY and Brian F. McDonough, Esq., Drinker Biddle & Reath, LLP, New York, NY.

Prudential, David Reiss, and Donald Reiss are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2003.

Claimant signed the Uniform Submission Agreement: September 19, 2002.

Joint Statement of Answer filed by Respondents on or about: May 5, 2003.

Respondent Prudential signed the Uniform Submission Agreement: May 19, 2003.

Respondent David Reiss did not sign the Uniform Submission Agreement.

Respondent Donald Reiss did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; failure to supervise; failure to follow instructions; violation of New York Stock Exchange Rules 405, 408, and 342; violation of NASD Conduct Rules 2110, 2120, 2310, and 3010; breach of contract; misrepresentation;

omissions; breach of fiduciary duty; negligence; and common law fraud. The causes of action relate to common stock and options.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent Prudential asserted the following cause of action: failure to repay monies owed with respect to an unpaid debit balance.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$8,500,000.00; disgorgement; punitive damages; interest from the date of loss to the date of the award and payment of final judgment herein; reasonable attorneys' fees; costs, expert and witness fees and administrative expenses; and any other and further relief the Panel finds just and equitable.

Respondents requested that Claimant's claim be denied; on its Counterclaim, Prudential requested compensatory damages in the amount of \$132,306.11; costs; and attorneys' fees; and expungement of David Reiss' and Donald Reiss' CRD records.

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

Respondents David Reiss and Donald Reiss did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements 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 or about July 29, 2004, NASD Dispute Resolution was notified that the parties settled this matter.

On or about August 2, 2004, Respondents David Reiss and Donald Reiss requested that, although the Claimant settled with Respondents, the Panel remain in place as they intended to seek expungement of the allegations made in this arbitration from their CRD records. On or about September 14, 2004, Respondents David Reiss and Donald Reiss made a request for expungement. Claimant did not submit a response to the request. On or about October 25, 2004, the Panel determined to grant the request for expungement of David Reiss' CRD record and Donald Reiss' CRD record.

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 Respondents David Reiss' and Donald Reiss' request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Reiss' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to

Members 99-09 and 99-54, Respondent David Reiss must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donald Reiss' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Donald Reiss must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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	= \$ 600.00
Prudential's Counterclaim 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 persons at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 20-23, and 27-30, 2004, joint adjournment request	= Waived
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#### **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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: December 16, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: July 11, 2003 1 session	
Total Forum Fees	= \$1,650.00

1. The Panel has assessed \$825.00 of the forum fees against Claimant.
2. The Panel has assessed \$825.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 825.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,800.00
Refund Due Claimant	= \$ 375.00

2. Respondent Prudential is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 9,600.00
Total Fees	= \$10,600.00
Less payments	= \$10,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 825.00
Total Fees	= \$ 825.00
Less payments	= \$ 1,125.00
Refund Due Prudential	= \$ 300.00

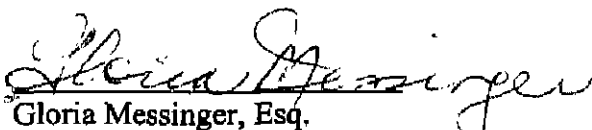
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Gloria Messinger, Esq.	-	Public Arbitrator, Presiding Chairperson
William Tanner	-	Public Arbitrator
Linda M. Parker	-	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 which is my award.

  
Gloria Messinger, Esq.  
Public Arbitrator, Presiding Chairperson

  
Signature Date

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William Tanner  
Public Arbitrator

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

\_\_\_\_\_  
Linda M. Parker  
Non-Public Arbitrator

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

November 2, 2004

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Date of Service (For NASD Dispute Resolution use only)

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Signature Date



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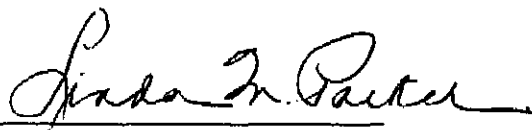
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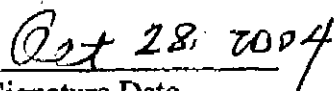
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