

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Celia Ginnodo, Individually, and as Successor Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, and Muriel Gunn, Individually and as Former Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, and as Beneficiary of those Trusts

and

03-00601  
Chicago, Illinois

Names of Respondents

Prudential Equity Group LLC, Inc., and First Union Securities, Inc.

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Nature of Dispute: Customers v. Members.

**REPRESENTATION OF PARTIES**

Celia Ginnodo, Individually, and as Successor Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, ("**Ginnodo**"), and Muriel Gunn, Individually and as Former Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, and as Beneficiary of those Trusts, ("**Gunn**") or ("**Claimants**"), were represented by Michael Hannafan, Esq., and Blake T. Hannafan, Esq., of Hannafan & Associates, located in Chicago, Illinois.

Prudential Equity Group, LLC., ("**Prudential**") was represented by Steven M. Malina, Esq., and Karen Dixon, Esq. of Ungaretti & Harris, located in Chicago, Illinois

Wachovia Securities Inc., f/k/a First Union Securities, Inc., ("**Wachovia**") represented by Anne W. Larkin, Esq., Wachovia Securities, Inc., located in Richmond, Virginia was dismissed from this action.

**CASE INFORMATION**

Claimants filed the Statement of Claim on or about February 11, 2003.  
Claimants signed the Uniform Submission Agreements on December 26, 2002.

Respondent Prudential filed The Statement of Answer on May 30, 2003.  
Respondent Prudential signed the Uniform Submission Agreement May 16, 2003.

Respondent Wachovia filed the Statement of Answer on May 2, 2003.

Respondent Wachovia signed Uniform Submission Agreement on April 30, 2003.

### **CASE SUMMARY**

Claimants alleged the following causes of action against Respondents; unsuitable and risky investments; failure to properly supervise Messrs. Hafeman, Siegel and Plog; churning; breach of contract; breach of fiduciary duty; negligent liquidation of annuities; and, failure to diversify Claimants' Trust Accounts. All of Claimants' causes of action relate to transactions involving common stock, annuities and debt instruments.

Unless specifically admitted in its Statement of Answer, Respondent Prudential denied the allegations set forth in the Statement of Claim and submitted the following affirmative defenses: the securities held in Claimants accounts were suitable and consistent with their stated investment objectives; Claimants ratified all transactions in their accounts; Claimants are estopped from asserting that trading in their accounts was unauthorized or excessive; Prudential acted in accordance with Claimants' directions with respect to each transaction; Claimants are barred by the applicable Statute of Limitations and laches; Claimants assumed the risks associated with their investments; Claimants are barred from recovering all or some of their alleged damages because of their own negligence; Claimants have not provided a reasonable basis from which damages may be calculated; Claimants are barred from any recovery because individually and as trustees of the Gunn Trust Accounts, they failed to exercise that degree of diligence and reasonable care required in the handling of the accounts and in their role as trustees; Claimants failed to mitigate their damages; Claimants damages were caused by intervening acts; and, Claimants do not provide a basis for an award of punitive damages in their Statement of Claim.

Unless specially admitted in its Statement of Answer, Respondent Wachovia denied the allegations set forth in the Statement of Claim and submitted the following affirmative defenses: Claimants failed to state a claim upon which relief may be granted; Claimants ratified each and every transaction in their accounts; the Statement of Claim is barred by the doctrines of laches, waiver and estoppel; any alleged losses that may have occurred were the direct result of market conditions, and other factors beyond the control of Respondent; all transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with the Claimants' investment objectives and financial condition; any duties owed by Respondent to Claimants were fully and faithfully carried out; Claimants are barred from recovery because they directly instructed, authorized and consented to the transactions in question; no misrepresentations or omissions of material fact existed upon which the Claimants relied to their detriment; at all times relevant herein, Claimants were aware of the risks involved with their investments; the actions of the Respondents were not the proximate cause of Claimants' alleged damages; Respondent discharged its responsibilities in a professional and ethical manner and all of its actions were well within the parameters of accepted brokerage procedures and all stock exchange and governmental regulations; to the extent any losses or diminution in value of Claimants'

accounts occurred such losses were the result of unforeseen market fluctuations and were within the risks assumed by Claimants; the damages allegedly suffered by the Claimants have no causal relationship with any act committed by or legally attributable to Respondent; Claimants claim is barred by the applicable Statute of Limitations; and, the Claimants, as trustees, owe the fiduciary duty to the trusts' beneficiary(ies) to properly administer the trust assets and cannot shift such duty to Respondent.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$1,150,000.00 in compensatory damages and \$1,000,000.00 in punitive damages plus interest, costs and attorneys' fees.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On March 10, 2004 Claimants dismissed Wachovia Securities f/k/a First Union Securities from this action.

At the close of the Claimants case, Respondent moved to dismissed all of Claimants' claims. The Panel granted the Motion as to the Churning cause of action and denied the Motion in all other respects.

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. In either case, the parties have agreed to receive conformed copies of the award while the original remains on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claims of Claimants Celia Ginnodo, Individually, and as Successor Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, and Muriel Gunn, Individually and as Former Trustee of the Gunn Family Revocable Living Trust and the Gunn Family Disclaimer Trusts, and as Beneficiary of those Trusts are dismissed in their entirety with prejudice;
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and,

3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the members were Prudential Equity Group LLC., and Wachovia Securities Inc., f/k/a First Union Securities, Inc. Each firm was assessed the following member fees:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One [1] Pre-hearing session with the Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conferences:      October 23, 2003      1 session	
Six [6] Hearing sessions x \$1,200.00	= \$ 7,200.00
Hearing Dates:      April 12, 2004      2 sessions	
April 13, 2004      2 sessions	
April 14, 2004      2 sessions	
Total Forum Fees	= \$ 8,400.00

The Panel has assessed \$4,200.00 of the forum fees to Claimants Celia Ginnodo and Muriel Gunn jointly and severally.

The Panel has assessed \$4,200.00 of the forum fees to Respondent Prudential Equity Group LLC.

**Fee Summary**

Claimants, Celia Ginnodo and Muriel Gunn are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fee</u>	= \$ 4,200.00
Total Fees	= \$ 4,700.00
<u>Less payments</u>	= \$ 1,700.00
Balance due to NASD Dispute Resolution	= \$3,000.00

Respondent, Prudential Securities shall be and hereby is liable for:

Member Fees	= \$ 8,850.00
<u>Forum Fees</u>	= \$ 4,200.00
Total Fees	= \$13,050.00
<u>Less payments</u>	= \$ 8,850.00
Balance Due NASD Dispute Resolution	= \$4,200.00

Respondent, Wachovia Securities Inc./f/k/a First Union Securities shall be and hereby is liable for:

Member Fees	= \$ 8,850.00
<u>Less payments</u>	= \$ 8,850.00
Balance Due NASD Dispute Resolution	= \$ 00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Howard J. Swibel, Esq. - Public Arbitrator, Presiding Chair  
Herbert S. Channick, Esq. - Public Arbitrator  
Robert B. Schmidt - Non-Public Arbitrator

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Arbitration No. 03-00601  
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Concurring Arbitrators:

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Howard J. Swibel, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Herbert S. Channick, Esq.  
Public Arbitrator

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Signature Date

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Robert B. Schmidt  
Non-Public Arbitrator

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Signature Date

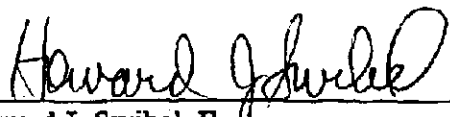
Date of Service April 23, 2004

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Arbitration No. 03-00601  
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Concurring Arbitrators:

  
Howard J. Swibel, Esq.  
Public Arbitrator, Presiding Chair

Apr. 23, 2004  
Signature Date

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Herbert S. Channick, Esq.  
Public Arbitrator

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Signature Date

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Robert B. Schmidt  
Non-Public Arbitrator

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Signature Date

Date of Service \_\_\_\_\_

NASD Dispute Resolution, Inc.  
Arbitration No. 03-00601  
Award Page 6 of 6

Concurring Arbitrators:

Howard J. Swibel, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Herbert S. Channick  
Herbert S. Channick, Esq.  
Public Arbitrator

April 23, 2004  
Signature Date

Robert B. Schmidt  
Non-Public Arbitrator

Signature Date

Date of Service \_\_\_\_\_



NASD Dispute Resolution, Inc.  
Arbitration No. 03-00601  
Award Page 6 of 6


Concurring Arbitrators:

Howard J. Swibel, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Herbert S. Channick, Esq.  
Public Arbitrator

Signature Date

  
Robert B. Schmidt  
Non-Public Arbitrator

4/26/04  
Signature Date

Date of Service \_\_\_\_\_