

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

---

*In the Matter of the Arbitration Between:*

Ruth Bennison Bothwell and Stephen F. Bothwell, Co-Trustees of the Ruth Bennison Bothwell Inter Vivos Trust, Claimants v. Prudential Securities, Inc. nka Prudential Equity Group, LLC, Mark A. Tabit, and Donald T. Ballard, Respondents

Case Number: 03-00664

Hearing Site: Los Angeles, California

---

Nature of the Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Stephen F. Bothwell  
In Propria Persona  
Villa Park, California

For Respondents:

Julie A. Mote, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: January 27, 2003

Amended Statement of Claim filed: June 4, 2003

Claimants' Joint Uniform Submission Agreement signed: February 21, 2003

Claimants' Revised Joint Uniform Submission Agreement signed: December 14, 2003

Joint Statement of Answer and Motion to Dismiss filed by Respondents: July 3, 2003

Respondent Prudential Securities, Inc. nka Prudential Equity Group, LLC's Uniform Submission Agreement signed: July 1, 2003

**CASE SUMMARY**

Claimants alleged negligence, failure to supervise, unsuitability, breach of fiduciary duty, misrepresentations, unauthorized trading, omission of facts, churning, and manipulation, involving unspecified securities.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested \$56,286.47 in compensatory damages, \$7,359.69 in interest, \$5,000.00 in punitive damages, \$975.00 in filing fees, and \$2,400.00 in preparation costs.

In the Amended Statement of Claim, Claimants requested \$62,612.58 in compensatory damages, \$5,560.00 in punitive damages, \$8,186.86 in interest, \$975.00 in filing fees, \$1,860.90 in attorney consultation fees, and \$3,600.00 in preparation costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety. Respondents Mark A. Tabit and Donald T. Ballard request expungement of this matter from their CRD records.

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

Respondents Mark A. Tabit and Donald T. Ballard did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On June 4, 2003, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On June 9, 2003, Claimants 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 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.

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) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mark A. Tabit's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Mark A. Tabit must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donald T. Ballard's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Donald T. Ballard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 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	= \$ 225.00
--------------------------	-------------

#### **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. nka Prudential Equity Group, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$ 750.00/session = \$ 2,250.00

Pre-hearing conferences:      October 7, 2003      1 session  
   November 10, 2003      1 session  
   April 2, 2004      1 session

6 Hearing sessions @ \$ 750.00/session = \$ 4,500.00

Hearings:      April 6, 2004      2 sessions  
                                 April 7, 2004      2 sessions  
                                 April 8, 2004      2 sessions

---

**Total Forum Fees** = \$ 6,750.00

1. The Panel assessed \$ 3,375.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 3,375.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,600.00
Less payments	= \$( 975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,625.00</b>

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

Member Fees	= \$ 3,550.00
Less payments	= \$(3,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,375.00
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,375.00</b>

NASD Dispute Resolution  
Arbitration No. 03-00664  
Award Page 5 of 6

---

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**

Newton Ira Waldman, Esq.	-	Public Arbitrator, Presiding Chair
Paul C. Herman, Esq.	-	Public Arbitrator
Linda L. Drummond	-	Non-Public Arbitrator

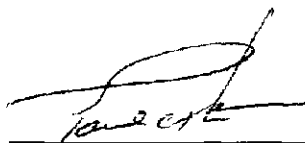
**Concurring Arbitrators' Signatures**



Newton Ira Waldman, Esq.  
Chair, Public Arbitrator

4/8/04

Signature Date



Paul C. Herman, Esq.  
Public Arbitrator

4/8/04

Signature Date



Linda L. Drummond  
Non-Public Arbitrator

4/8/04

Signature Date

4/8/04

Date of Service