

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

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In the Matter of the Arbitration Between

Name of Claimants

Robert L. Huwiler and Ruth Huwiler

and

03-01092  
Milwaukee, Wisconsin

Name of Respondents

Prentice Securities, Incorporated

Louis M. Kornman

Melvyn E. Panzer

Spencer D. Thomas

Michael Edward Tierney

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

**REPRESENTATION OF PARTIES**

Robert L. Huwiler and Ruth Huwiler ("**Claimants**") were represented by Mark E. Sanders, Esq., Halling & Cayo, S.C., Milwaukee, Wisconsin.

Prentice Securities, Incorporated ("**Respondent Prentice**") did not appear at the hearing. Respondent Prentice was originally represented by Robert Pluta, Esq., Quarles & Brady, Milwaukee, Wisconsin.

Louis M. Kornman ("**Respondent Kornman**") participated *pro se*.

Melvyn E. Panzer ("**Respondent Panzer**") was represented by David J. Hase, Esq., Cook & Franke, S.C., Milwaukee, Wisconsin.

Spencer D. Thomas ("**Respondent Thomas**") appeared *pro se*.

Michael Edward Tierney ("**Respondent Tierney**") appeared *pro se*. Respondent Tierney was previously represented by Alex Flynn, Esq., Alex Flynn & Associates, S.C., Milwaukee, Wisconsin.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 13, 2003. Amended Statement of Claim was filed on or about November 24, 2003. Claimant Robert L. Huwiler's Brief in Opposition to

Respondent Melvyn E. Panzer's Motion to Dismiss was filed on or about December 19, 2003. Claimant Robert L. Huwiler's Brief in Opposition to Respondent Michael Edward Tierney's Motion to Dismiss was filed on or about May 6, 2004. Submission Agreement of Claimants Robert L. Huwiler and Ruth Huwiler was signed on February 4, 2003.

Answer of Prentice Securities, Inc., Melvin E. Panzer and Spencer D. Thomas to Claimants' Statement of Claim was filed on or about April 11, 2003. Submission Agreement of Respondent Prentice Securities, Incorporated was signed on April 27, 2003. Submission Agreement of Respondent Spencer D. Thomas was signed on May 2, 2003. Submission Agreement of Respondent Melvyn E. Panzer was signed on May 12, 2003.

Motion to Dismiss and Brief in Support of Motion to Dismiss were filed by Melvin Panzer on or about December 3, 2003.

Motion to Dismiss by Respondent Louis M. Kornman was filed on or about April 4, 2003.

Reply Brief in Support of Respondent Panzer's Motion to Dismiss was filed on or about January 14, 2004. Answer to Amended Statement of Claims was filed by Respondent Panzer on April 2, 2004.

Answer of Michael Tierney to Claimants' Amended Statement of Claim was filed on or about March 31, 2004. Respondent Michael Tierney's Motion to Dismiss the Claimants' Amended Statement of Claim was filed on or about April 15, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: Fraud, negligent misrepresentation, negligence, and negligent supervision. Claimants alleged that Respondent Thomas sold them unsuitable, speculative securities and failed to provide them with available bond rating information, which would have disclosed the amount of risk associated with the securities.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimants understood the risks associated with the purchase of the bonds at issue. Respondents also asserted a number of affirmative defenses including, but not limited to: failure to mitigate; claimants' right of recovery is barred by the doctrine of ratification; and assumption of the risk.

### **RELIEF REQUESTED**

Claimants requested that the Arbitration Panel enter a decision in their favor against Respondents awarding them:

- (1) damages in an exact amount to be determined at the time of hearing (estimated at \$270,000.00 in compensatory damages)
- (2) their costs and expenses in pursuing this action, including their reasonable attorneys' fees;
- (3) \$500,000.00 in punitive damages; and
- (4) such other and further relief as the Panel may deem appropriate.

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

Respondent Panzer requested that an Award be made denying the claims of each Claimant as to him on the merits and with prejudice and granting him his costs and disbursements, including forum fees and reasonable attorneys' fees.

Respondent Tierney requested dismissal of the Amended Statement of Claims and an award of fees and costs.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Prentice Securities, Incorporated has been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Prentice Securities, Incorporated has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Michael Edward Tierney did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

On or about January 29, 2004, the Arbitration Panel entered an Order on Motion to Dismiss of Melvyn E. Panzer – Motion to Dismiss denied without prejudice.

Louis M. Kornman was dismissed as a party by an agreed order for dismissal without prejudice entered by the Arbitration Panel on January 20, 2004.

Respondent Melvin E. Panzer was dismissed from this matter during the course of the hearings held in June, 2004.

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(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondents Prentice Securities, Incorporated and Spencer D. Thomas shall be and hereby are jointly and severally liable for and shall pay to Claimants Robert L. Huwiler and Ruth Huwiler the sum of \$126,000.00 (**One Hundred Twenty Six Thousand Dollars and No Cents**) as compensatory damages.
2. Respondent Michael Edward Tierney shall be and hereby is liable for and shall pay to Claimants Robert L. Huwiler and Ruth Huwiler the sum of \$102,000.00 (**One Hundred Two Thousand Dollars and No Cents**) as compensatory damages.
3. Interest at the rate of 12% per annum is awarded on the above stated sums from the date of this award to and inclusive of the date this Award is paid.
4. 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.
5. 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, not specifically awarded or otherwise provided for above.

### **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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Prentice Securities, Incorporated.

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

**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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

3	Pre-hearing session(s) with Panel	x	1,200.00	\$	3,600.00
	October 10, 2003	1	session		
	January 27, 2004	1	session		
	February 24, 2004	1	session		
4	Hearing sessions	x	1,200.00	\$	4,800.00
	June 23, 2004	2	sessions		
	June 24, 2004	2	sessions		
	Total Forum Fees			\$	8,400.00

The Arbitration Panel has assessed \$8,400.00 of the forum fees jointly and severally to Prentice Securities, Incorporated, Michael Edward Tierney, and Spencer D. Thomas.

**Fee Summary**

Claimants, Robert L. Huwiler and Ruth Huwiler shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-1,575.00

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Balance to be refunded by NASD Dispute Resolution = \$ -1,200.00

Respondent, Prentice Securities, Incorporated, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less payments	= \$	-2,250.00
Balance Due NASD Dispute Resolution	= \$	4,750.00

Respondents, Prentice Securities, Incorporated, Michael Edward Tierney and Spencer D. Thomas, shall be and hereby are jointly and severally liable for:


Forum Fees	= \$	8,400.00
Total Fees	= \$	8,400.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	8,400.00

All balances are due to NASD Dispute Resolution

### ARBITRATION PANEL

Percy L. Julian, Jr., Esq. - Public Arbitrator, Presiding Chair  
 Thomas F. Mahoney, Esq. - Public Arbitrator  
 Kevin J. Demet, JD - Public Arbitrator

Concurring Arbitrators:

  
 Percy L. Julian, Jr., Esq.  
 Public Arbitrator, Presiding Chair

Dec. 10, 2004  
 Signature Date

\_\_\_\_\_  
 Thomas F. Mahoney, Esq.  
 Public Arbitrator

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

\_\_\_\_\_  
 Kevin J. Demet, JD  
 Public Arbitrator

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

\_\_\_\_\_  
 Date of Service (For NASD office use only)

NASD Dispute Resolution  
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 Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
 Thomas F. Mahoney, Esq.  
 Public Arbitrator

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

*Kevin J. Demet*  
 Kevin J. Demet, JD  
 Public Arbitrator

*11/29/2004*  
 Signature Date

\_\_\_\_\_  
 Date of Service (For NASD office use only)



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Thomas F. Mahoney, Esq. - Public Arbitrator  
Kevin J. Demet, JD - Public Arbitrator

Concurring Arbitrators:

/s/ Percy L. Julian, Jr.  
Percy L. Julian, Jr., Esq.  
Public Arbitrator, Presiding Chair

December 10, 2004  
Signature Date

/s/ Thomas F. Mahoney  
Thomas F. Mahoney, Esq.  
Public Arbitrator

December 1, 2004  
Signature Date

/s/ Kevin J. Demet  
Kevin J. Demet, JD  
Public Arbitrator

November 29, 2004  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)