

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

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In the Matter of the Arbitration Between:

Neal Carter M.D. and Kim Carter, and W. Neal Carter TTEE Atwater Medical Group Profit Sharing Plan, Claimants v. First Union Securities, Inc. (formerly known as Everen Securities, Inc.) now dba Wachovia Securities, LLC, Linsco/Private Ledger Corp. and Prudential Equity Group, LLC Respondents

Case Number: 03-01355

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Members

**REPRESENTATION OF PARTIES**

For Claimants:

Rudy Nolen, Esq.  
Nolen Saul Brelsford  
Sacramento, California

For Respondent Wachovia Securities, LLC:

Robert J. Girard, Esq.  
Jones, Bell, Abbott, Fleming &  
Fitzgerald L.L.P.  
Los Angeles, California

For Respondent Linsco/Private Ledger Corp.:

Jeffrey K. Compton, Esq.  
Markun Zusman & Compton LLP  
Pacific Palisades, California

For Respondent Prudential Equity Group, LLC:

Charles B. LaChaussee, Esq.  
Prudential Equity Group, Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: February 24, 2003

Amended Statement of Claim filed: May 25, 2004

Second Amended Statement of Claim filed: August 30, 2004

Claimants' Reply Brief to Respondents' Motions to Dismiss/Motions For More Definitive Statement filed: June 26, 2003

Claimants' Reply Brief to Respondents' Motion to Dismiss filed: July 28, 2004

Claimants' Uniform Submission Agreement signed: January 25, 2003

Statement of Answer filed by Respondent Wachovia Securities, LLC, formerly known as First Union Securities, Inc. and as Everen Securities, Inc. ("Wachovia"): June 6, 2003

Respondent Wachovia's Motion to Dismiss Claimants' Amended Statement of Claim filed: July 12, 2004

Respondent Wachovia's Uniform Submission Agreement filed: June 9, 2003

Respondent Linsco/Private Ledger Corp.'s ("LPL") Motion For Dismissal, or in the Alternative, Motion For More Definite Statement of Claim and General Denial filed: May 21, 2003

Respondent LPL's Uniform Submission Agreement signed: March 31, 2003

Statement of Answer and Request For Dismissal filed by Respondent Prudential Securities Incorporated, now known as Prudential Equity Group, LLC ("Prudential"): May 27, 2003

Respondent Prudential's Uniform Submission Agreement filed: May 27, 2003

### **CASE SUMMARY**

Claimants alleged the following claims with respect to investments in various securities made in their accounts: 1) Breach of Contract; 2) Common Law Fraud; 3) Breach of Fiduciary Duty; and 4) Negligence. Claimants did not specify the securities at issue in this matter.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

In their Statement of Claim, Claimants requested damages in the amount of \$750,000.00, and punitive damages in the amount of \$4,000,000.00, together with pre-judgment interest, costs and such other relief as deemed necessary.

In their Amended Statement of Claim, Claimants requested damages in the amount of \$750,000.00, and punitive damages in the amount of \$4,000,000.00, together with pre-judgment interest, costs and such other relief as deemed necessary.

In their Second Amended Statement of Claim, Claimants requested damages in an amount between \$332,204.00 and \$498,724.00, and punitive damages in the amount of \$4,000,000.00, together with pre-judgment interest, costs and such other relief as deemed necessary.

Respondents requested:

1. Dismissal of Claimants' claims;
2. That Claimants be required to pay all costs and attorneys' fees incurred by Respondents; and
3. Such other and further relief as the Panel deems appropriate.

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

On July 27, 2003, Claimants and Claimants' counsel 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 Panel 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 positions of the parties relative to Respondents' Motions to Dismiss/Motions For More Definitive Statement, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. On or about April 12, 2004, the Panel granted the Motions to Dismiss by Respondents Prudential and LPL with prejudice. The Panel granted the Motion to Dismiss claim against Respondent Wachovia with leave to file a more definite and fact specific statement of claim.
2. On or about August 2, 2004, the Panel granted the Motion to Dismiss claim against Respondent Wachovia with leave to file an amended statement of claim. The Panel further ruled that the amended claim shall more specifically identify each account which gives rise to this action and the loss allegedly sustained in each such account.

3. On or about January 26, 2005, the Panel was advised that Claimants had reached a settlement with Wachovia in this matter.
4. Each party shall bear its own costs, including attorney's fees.
5. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$600.00

#### **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, Wachovia, LPL and Prudential are parties and the following fees are assessed:

##### **Wachovia**

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

##### **LPL**

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Total Member Fees	= \$3,550.00

##### **Prudential**

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Total Member Fees	= \$3,550.00

#### **Adjournment Fees**

Referencing the adjourned hearing dates of January 3-5, 2005, the Panel ruled that the \$1,200.00 adjournment fee shall be split between Claimants and Respondent Wachovia.

**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 Chair/Panel. The following fees are assessed:

(4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$4,800.00  
Pre-hearing conferences:      March 24, 2004                      1 session  
   April 12, 2004                      1 session  
   August 2, 2004                      1 session  
   January 4, 2005                      1 session

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**Total Forum Fees** = **\$4,800.00**

The Panel assessed \$2,400.00 in forum fees to Claimants, jointly and severally.

The Panel assessed \$1,200.00 in forum fees to Respondent Wachovia.

The Panel waived the \$1,200.00 forum fee in connection with the pre-hearing conference held March 24, 2004.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
<b>Total Fees</b>	<b>= \$ 3,600.00</b>
<u>Less Payments</u>	<u>= \$( 1,800.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 1,800.00</b>

2. Respondent Wachovia is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
<b>Total Fees</b>	<b>= \$ 10,350.00</b>
<u>Less Payments</u>	<u>= \$( 8,550.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 1,800.00</b>

3. Respondent LPL is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less Payments</u>	<u>= \$( 3,550.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

4. Respondent Prudential is charged with the following fees and costs:


Member Fees	= \$ 3,550.00
<u>Less Payments</u>	<u>= \$( 3,550.00)</u>
Balance Due NASD-DR	= \$ 0.00

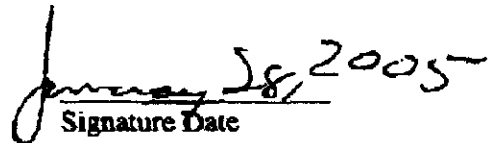
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jane Bradley, Esq.	-	Public Arbitrator, Presiding Chair
Nancy Hutt, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Jane Bradley, Esq.  
Chair, Public Arbitrator

  
Signature Date

\_\_\_\_\_  
Nancy Hutt, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Herbert L. Brown  
Non-Public Arbitrator

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

  
Date of Service

4. Respondent Prudential is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Less Payments	= \$( 3,550.00)
Balance Due NASD-DR	= \$ 0.00

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

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Nancy Hutt, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

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Jane Bradley, Esq.  
Chair, Public Arbitrator

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Signature Date

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Nancy Hutt, Esq.  
Public Arbitrator

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1/28/05  
Signature Date

\_\_\_\_\_  
Herbert L. Brown  
Non-Public Arbitrator

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

\_\_\_\_\_  
1/31/05  
Date of Service

4. Respondent Prudential is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less Payments</u>	<u>= \$( 3,550.00)</u>
Balance Due NASD-DR	= \$ 0.00

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

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Chair, Public Arbitrator

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Signature Date

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Nancy Hutt, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Herbert L. Brown  
Non-Public Arbitrator

1-31-2005  
\_\_\_\_\_  
Signature Date

1/31/05  
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Date of Service