

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

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In the Matter of the Arbitration Between

Name of Claimant

Dennis J. Reardon

and

03-01917  
Phoenix, Arizona

Name of Respondents

Prudential Securities, Inc. n/k/a Prudential Equity Group LLC  
Gary G. Vescio

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

**REPRESENTATION OF PARTIES**

Dennis J. Reardon ("**Claimant**") was represented by Raymond M. Hunter, Esq., Galbut & Hunter, P.C., Phoenix, Arizona.

Prudential Securities, Inc. n/k/a Prudential Equity Group LLC ("**Respondent Prudential**") and Gary G. Vescio ("**Respondent Vescio**") (collectively as "**Respondents**") were represented by Charles B. LaChaussee, Esq., Prudential Equity Group LLC, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 18, 2003. Submission Agreement of Claimant Dennis J. Reardon was signed on March 3, 2003.

Statement of Answer was filed by Respondent Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio on or about May 28, 2003. Charles B. LaChaussee signed submission Agreement of Respondent Prudential Securities, Inc. n/k/a Prudential Equity Group LLC on May 27, 2003. Submission Agreement of Respondent Gary G. Vescio was signed on June 2, 2003.

**CASE SUMMARY**

Claimant alleged that:

Mr. Reardon suffered catastrophic losses to his retirement account resulting from unsuitable, ill-managed investments and imprudent investment advice and strategy. In response to Mr.

Reardon's expressions of concern about the riskiness of the investments and the handling of his account, Vescio falsely assured Mr. Reardon that his account value would recover because the stock he held was in good companies, and that there was no cause for alarm. Vescio made these statements to Mr. Reardon with the apparent intent of inducing Mr. Reardon to continue to trust his judgment in the handling of his account, and to keep the account at Prudential.

Based on Vescio and Prudential's misrepresentations, Mr. Reardon was lulled into believing that his investments were safe. Mr. Reardon was entitled to rely on Vescio as a matter of law based upon respondents' fiduciary relationship with Mr. Reardon, and their duties to him.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Respondents acted in good faith, pursuant to the Claimant's instructions, and PSI maintains that its supervision of Mr. Vescio and the Claimant's accounts was appropriate and sufficient to have reasonably detected any violations of industry standards, rules or regulations with respect to the handling of the Claimant's accounts. Moreover, the Claimant is an intelligent, educated person with prior investment experience who was capable of understanding the risks associated with investing in equities and hiring professional money managers. In sum, the Claimant was fully capable of making the investment decisions at issue, and the Claimant consistently expressed great interest in achieving high returns by owning common stocks in professionally managed portfolios.

The Claimant authorized PSI to retain professional investment managers pursuant to the Claimant's expressly stated investment objectives and goals. The Claimant understood the risks associated with the purchase of common stocks and the equity markets, and he clearly knew the relationship between risk and return. The Claimant decided to accept the risks, as well as the potential rewards associated with equity investments. Therefore, Claimant, not these Respondents is responsible for any losses incurred in his account.

In conclusion, Respondents specifically deny that they permitted the Claimant to engage in trading which was excessive or unsuitable for the Claimant, engaged in any deceptive conduct, acted with intent to deceive, mismanaged the Claimant's accounts or acted incompetently or negligently in connection with the securities transactions in the Claimant's accounts. Respondents deny that they breached any fiduciary duties or that they violated any applicable rules, regulations or laws.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages, attorneys' fees and costs as follows:

Losses in excess of \$319,952 were incurred by Mr. Reardon. Under Arizona law, the statutory rate of interest is 10% per annum. A.R.S. §44-1201(A). Mr. Reardon is entitled to his loss of principal, plus pre- and post-award interest at 10% per annum, plus attorneys' fees and costs.

This action involves a contractual arrangement, and A.R.S. §12-341.01 provides for the award of attorneys' fees to the prevailing party "[i]n any contested action arising out of contract, express or implied." Mr. Reardon is entitled to an award of attorneys' fees and costs under the facts and circumstances of this case. Attorneys' fees are also applicable under A.R.S. §44-2001.

Accordingly, Mr. Reardon is entitled to a recovery against respondents for:

- A. His damages, including actual, out of pocket, and expectancy damages;
- B. Pre- and post-award interest;
- C. His attorneys' fees;
- D. His costs; and
- E. Such other relief as may be just and proper under the circumstances.

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**

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio shall be and hereby are jointly and severally liable for and shall pay to Claimant Dennis J. Reardon the sum of \$286,000.00 (**Two Hundred Eighty Six Thousand Dollars**

**and No Cents**) as compensatory damages. If asked to apportion responsibility among the respondents, the Arbitration Panel would assign 80% of the responsibility to respondent Prudential and 20% to respondent Vescio. The Arbitration Panel would recommend that Prudential implement a system that would alert branch managers and other supervisory personnel of significant losses incurred in managed accounts.

2. Respondents Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio shall be and hereby are jointly and severally liable for and shall pay to Claimant Dennis J. Reardon the sum of \$50,000.00 (**Fifty Thousand Dollars and No Cents**) as attorneys' fees.
3. Respondents Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio shall be and hereby are jointly and severally liable for and shall pay to Claimant Dennis J. Reardon the sum of \$12,000.00 (**Twelve Thousand Dollars and No Cents**) as expert witness fees.
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.

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	= \$300.00
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##### **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 Prudential Securities, Inc. n/k/a Prudential Equity Group LLC.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

### 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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
October 22, 2003	1 session			
5 Hearing sessions	x	1,125.00	\$	5,625.00
May 18, 2004	2 sessions			
May 19, 2004	3 sessions			
Total Forum Fees			\$	6,750.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Dennis J. Reardon.  
The Arbitration Panel has assessed \$3,375.00 of the forum fees jointly and severally to Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio.

### Fee Summary

Claimant, Dennis J. Reardon, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	3,375.00
Total Fees	= \$	3,675.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

Respondent, Prudential Securities, Inc. n/k/a Prudential Equity Group LLC, shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

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Respondents, Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,375.00
<u>Total Fees</u>	= \$	3,375.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,375.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

John J. Balitis, Jr., Esq. - Public Arbitrator, Presiding Chair  
David C. Rupley - Public Arbitrator  
Richard E. Anderson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ John J. Balitis  
John J. Balitis, Jr., Esq.  
Public Arbitrator, Presiding Chair

May 21, 2004  
Signature Date

/s/ David C. Rupley  
David C. Rupley  
Public Arbitrator

May 21, 2004  
Signature Date

/s/ Richard E. Anderson  
Richard E. Anderson  
Non-Public Arbitrator

May 21, 2004  
Signature Date

5-25-04  
Date of Service (For NASD office use only)

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Arbitration No. 03-01917  
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NASD Dispute Resolution, Inc.  
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MAY 25 2004

Respondents, Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Gary G. Vescio,  
shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,375.00
<u>Total Fees</u>	= \$	3,375.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,375.00

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**ARBITRATION PANEL**

John J. Balitis, Jr., Esq. - Public Arbitrator, Presiding Chair  
David C. Rupley - Public Arbitrator  
Richard E. Anderson - Non-Public Arbitrator

Concurring Arbitrators:

John J. Balitis, Jr., Esq.  
Public Arbitrator, Presiding Chair

5/21/04  
Signature Date

David C. Rupley  
Public Arbitrator

Signature Date

Richard E. Anderson  
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution  
Arbitration No. 03-01917  
Award Page 6 of 6

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Forum Fees	= \$	3,375.00
Total Fees	= \$	3,375.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,375.00

All balances are due to NASD Dispute Resolution

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David C. Rupley - Public Arbitrator  
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Concurring Arbitrators:

John J. Balitis, Jr., Esq.  
Public Arbitrator, Presiding Chair

  
David C. Rupley  
Public Arbitrator

Richard E. Anderson  
Non-Public Arbitrator

Signature Date

5-21-04  
Signature Date

Signature Date



Less payments

Balance Due NASD Dispute Resolution

= \$ -0.00

3,375.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

John J. Balitis, Jr., Esq. - Public Arbitrator, Presiding Chair

David C. Rupley - Public Arbitrator

Richard E. Anderson - Non-Public Arbitrator

Concurring Arbitrators:

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John J. Balitis, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

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David C. Rupley  
Public Arbitrator

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

*Richard E. Anderson*  
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Richard E. Anderson  
Non-Public Arbitrator

*05-21-04*  
\_\_\_\_\_  
Signature Date

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