

Modified Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles S. Kirwan (Claimant) vs. Prudential Securities, Inc., n/k/a Prudential Equity Group, LLC, Stephen Christopher Attar, and Paul Victor Kappel (Respondents)

Case Number: 03-02612

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimant Charles S. Kirwan, Esq., ("Claimant") appeared *pro se*.

Respondents Prudential Securities, Inc., n/k/a Prudential Equity Group, LLC ("Prudential Equity") and Paul Victor Kappel ("Kappel"): Michael B. Cosentino, Esq., Seegel, Lipshutz & Wilchins, P.C. Wellesley, MA.

Respondent Stephen Christopher Attar hereinafter referred to as ("Attar"): appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: April 9, 2003.

Answer to Counterclaim filed on or about: June 12, 2003.

Claimant signed the Uniform Submission Agreement: April 9, 2003.

Joint Statement of Answer and Counterclaim filed by Prudential Equity and Kappel on or about: June 5, 2003.

Prudential Equity signed the Uniform Submission Agreement: August 3, 2003.

Kappel signed the Uniform Submission Agreement: June 5, 2003.

Statement of Answer filed by Attar on or about: May 29, 2003.

Attar signed the Uniform Submission Agreement: June 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; unsuitability; breach of fiduciary duty; omission; errors; and loss of opportunity. The causes of action relate to the trading on margin of shares in Compuware stock.

Unless specifically admitted in their Answer, Prudential Equity and Kappel denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Attar denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, Respondents Prudential Equity and Kappel asserted the following causes of action: breach of contract and indebtedness.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$419,724.88 for losses in his command account; \$82,026.18 for losses in his retirement accounts; \$27,868.88 for repayment of his promissory note; that the debit margin balance in his account be voided; punitive damages; and costs.

Respondents Prudential Equity and Kappel requested dismissal of the Statement of Claim in its entirety.

Attar requested that the Statement of Claim be dismissed in its entirety.

In their Counterclaim, Respondents requested compensatory damages in the amount of \$24,000.00; interest; expungement of all references to this arbitration from Kappel's CRD record; attorneys' fees; and costs.

Claimant requested that Prudential Equity and Kappel's Counterclaim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of Claimant's case, Respondents Prudential Equity and Kappel moved to dismiss Claimant's claims with prejudice. After hearing oral arguments from all parties, and after due deliberation by the arbitrators, the Panel determined to grant Prudential Equity and Kappel's Motion to Dismiss.

On or about January 26, 2006, the Panel, having realized that their order granting expungement for Respondent Attar was not captured in the previous Award, directed that this Modified Award be issued.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

1. Claimant's claims are dismissed in their entirety.

2. Claimant is liable for and shall pay to Prudential Equity Group \$21,997.83 in compensatory damages.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul Victor Kappel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Paul Victor Kappel 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 Stephen Christopher Attar's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Stephen Christopher Attar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein including punitive damages, is denied.

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
Counterclaim filing fee	= \$ 750.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, LLC is a party.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 1,800.00
Pre-hearing conferences:	
November 10, 2005	1 session
November 28, 2005	1 session
December 15, 2005	1 session
December 23, 2005	1 session
One (1) Pre-hearing session with Panel @ \$1,200.00 per session	= \$ 1,200.00

Pre-hearing conference:	March 29, 2005	1 session	
Three (3) Hearing sessions @ \$1,200.00 per session			= \$ 3,600.00
Hearing Dates:	January 9, 2006	2 sessions	
	January 10, 2006	1 session	
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Total Forum Fees			= \$ 6,600.00

1. The Panel has assessed \$6,600.00 of the forum fees against the Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 6,975.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

2. Prudential Equity is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,450.00
Refund Due Prudential Equity	= \$ 450.00

3. Prudential Equity and Kappel are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Debra M. Brown, Esq.	-	Public Arbitrator, Presiding Chairperson
Bennett Fisch	-	Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Debra M. Brown
Debra M. Brown, Esq.
Public Arbitrator, Presiding Chairperson

1-23-06
Signature Date

Bennett Fisch
Bennett Fisch
Public Arbitrator

Signature Date

J. David Crawford
J. David Crawford
Non-Public Arbitrator

Signature Date

January 27, 2006
Date of Service (For NASD Dispute Resolution use only)

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Bennett Fisch	-	Public Arbitrator
J. David Crawford	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date


Bennett Fisch
Public Arbitrator


Signature Date

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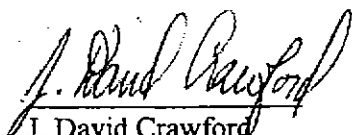
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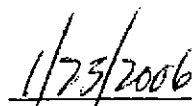
Signature Date

Bennett Fisch
Public Arbitrator

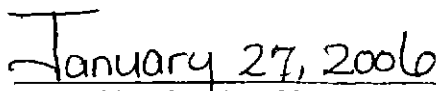
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Non-Public Arbitrator



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