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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Nellie M. Spegele

Case Number: 03-04085

Names of the Respondents  
Prudential Securities Incorporated,  
Niles Jester, Brian Cline and Mitch Alford

Hearing Site: Orlando, Florida.

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

**REPRESENTATION OF PARTIES**

For Nellie M. Spegele, hereinafter referred to as "Claimant": Bernard H. Dempsey, Jr., Esq., Dempsey & Associates, P.A., Winter Park, Florida.

For Prudential Securities Incorporated ("Prudential"), Niles Jester ("Jester"), Brian Cline ("Cline") and Mitch Alford ("Alford"), hereinafter collectively referred to as "Respondents": Marc S. Dobin, Esq. and Debra A. Jenks, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 5, 2003.

Claimant signed the Uniform Submission Agreement: May 27, 2003.

Answer and Affirmative Defenses filed by Respondents on or about: August 20, 2003.

Respondent Cline signed the Uniform Submission Agreement: August 10, 2003.

Respondent Alford signed the Uniform Submission Agreement: August 10, 2003.

Respondent Jester signed the Uniform Submission Agreement: August 10, 2003.

Respondent Prudential signed the Uniform Submission Agreement: September 19, 2003.

Motion to Dismiss Claim Under the Florida Deceptive and Unfair Trade Practices Act filed by Respondents on or about: December 22, 2003.

Claimant's Response to Motion to Dismiss Claim Under the Florida Deceptive and Unfair Trade Practices Act filed on or about: January 8, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; failure to supervise; breach of fiduciary duty; fraud; fraud in the inducement; negligence; churning; and, violation of the Florida Deceptive and Unfair Trade Practices Act. The causes of action relate to Claimant's placement by Respondents in a Managed Assets Consulting Services ("MACS") account and that Claimant's accounts were 100% invested in equities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondents asserted a Motion to Dismiss the claim for damages under the Florida Deceptive and Unfair Trade Practices Act on the

basis that the Florida Deceptive and Unfair Trade Practices Act was not applicable to securities transactions.

In response to the Motion to Dismiss Claim Under the Florida Deceptive and Unfair Trade Practices Act, Claimant denied the assertions therein.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$135,000.00, pre- and post-Award interest at the legal rate from September 1, 2000, punitive damages, attorney's fees, costs and any other relief deemed just and proper.

Respondents requested that Claimant take nothing by way of this action, that the Statement of Claim be dismissed, with prejudice, that the Statement of Claim be expunged from the NASD Central Registration Depository ("CRD") records of Respondents Jester, Cline and Alford, costs and a finding of entitlement to recover their attorneys' fees as may be awarded by a court of law.

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

On or about January 17, 2004, the Panel issued an order denying Respondents' Motion to Dismiss Claim Under the Florida Deceptive and Unfair Trade Practices Act.

On or about August 24, 2004, the Panel issued an order stating post-hearing submissions were due September 10, 2004, with rebuttals due September 20, 2004. On or about September 7, 2004, the parties submitted a Joint Motion for an Extension of Time requesting that the post-hearing submission deadline be extended to September 17, 2004 and the rebuttal deadline be extended to September 27, 2004. On or about September 8, 2004, the Panel issued an order granting the parties' request. Thereafter, on or about October 4, 2004, the Panel issued an order further extending the rebuttal deadline to October 4, 2004.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

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

Respondents are jointly and severally liable to Claimant on the claims of unsuitability, breach of fiduciary duty, failure to supervise and negligence and shall pay to Claimant compensatory damages in the amount of \$38,500.00, plus interest at the legal rate provided by the state of Florida, per annum, from September 1, 2000 to the date of payment of the Award.

Respondents are jointly and severally liable and shall pay to Claimant costs in the amount of \$18,090.40.

Respondents are jointly and severally liable and shall pay to Claimant the sum of \$300.00

representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

The parties are each responsible for their own attorney's fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and claim for damages pursuant to the Florida Deceptive and Unfair Trade Practices Act, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm Prudential Securities Incorporated is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: March 1, 2004	1 session
July 7, 2004	1 session
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: December 15, 2003	1 session
Fifteen (15) Hearing sessions @ \$1,125.00	= \$16,875.00
Hearing Dates: May 26, 2004	3 sessions
May 27, 2004	3 sessions
May 28, 2004	3 sessions
June 10, 2004	2 sessions
June 11, 2004	2 sessions
August 23, 2004	2 sessions
Total Forum Fees	= \$18,900.00

The Panel has assessed the total forum fees of \$18,900.00 jointly and severally to Respondents.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Prudential is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 18,900.00
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Total Fees	= \$ 18,900.00
<u>Less payments</u>	<u>= \$ 2,600.00</u>
Balance Due NASD Dispute Resolution	= \$16,300.00

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

**ARBITRATION PANEL**

Ronald M. Gordon	-	Public Arbitrator, Presiding Chairperson
Daniel J. Costello, Ph.D.	-	Public Arbitrator
Alison Hardage	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

11/04/04

\_\_\_\_\_  
Ronald M. Gordon  
Public Arbitrator, Presiding Chairperson

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

/s/

11/04/04

\_\_\_\_\_  
Daniel J. Costello, Ph.D.  
Public Arbitrator

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

/s/

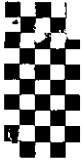
11/04/04

\_\_\_\_\_  
Alison Hardage  
Non-Public Arbitrator

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

11/04/04

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



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Arbitration No. 03-04085  
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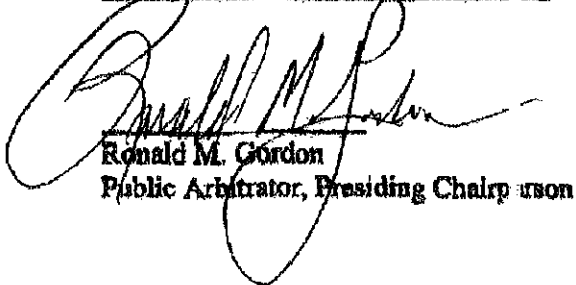
Total Fees	= \$ 18,900.00
<u>Less payments</u>	<u>= \$ 2,600.00</u>
Balance Due NASD Dispute Resolution	= \$16,300.00

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

Signature Date

Alison Hardage  
Non-Public Arbitrator

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 Arbitration No. 03-04085  
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Total Fees	= \$ 18,900.00
Less payments	= \$ 7,600.00
Balance Due NASD Dispute Resolution	= \$11,300.00

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### ARBITRATION PANEL

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Daniel J. Costello, Ph.D.	-	Public Arbitrator
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### Concurring Arbitrators' Signatures

Ronald M. Gordon  
 Public Arbitrator, Presiding Chairperson



Daniel J. Costello, Ph.D.  
 Public Arbitrator

Signature Date

11/4/04  
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Award Page 5

Total Fees	= \$ 18,900.00
<u>Less payments</u>	<u>= \$ 2,600.00</u>
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