

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Joseph R. Gennett and Joseph R. Gennett IRA (Claimants) v. Joseph Tiderencel, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Prudential Equity Group, LLC f/k/a Prudential Securities, Incorporated (Respondents)

Case Number: 03-04197

Hearing Site: Albany, New York

Nature of the Dispute: Customers v. Members and Associated Person.

REPRESENTATION OF PARTIES

Claimants Joseph R. Gennett ("Gennett") and Joseph R. Gennett IRA ("Gennett IRA") hereinafter collectively referred to as "Claimants": Donald A.W. Smith, Esq., Pearl Malarney Smith, P.C, Rochester, New York. Previously represented by: Brian M. Prew, Esq., Binghamton, NY.

Respondent Joseph Tiderencel ("Tiderencel"): Michael B. Cosentino, Esq., Seegel, Lipshutz & Wilchins, P.C., Wellesley, MA (for the period of time Tiderencel was employed by Prudential Securities, Incorporated); Alyson M. Weiss, Esq., Bryan I. Reyhani, Esq., Loeb & Loeb, LLC, New York, NY (for the period of time Tiderencel was employed by Merrill Lynch, Pierce Fenner & Smith Incorporated).

Respondent Merrill Lynch, Pierce Fenner & Smith Incorporated ("Merrill Lynch"): Alyson M. Weiss, Esq., Bryan I. Reyhani, Esq., Loeb and Loeb, LLC, New York, NY.

Respondent Prudential Equity Group, LLC f/k/a Prudential Securities, Incorporated ("Prudential"): Michael B. Cosentino, Esq., Seegel, Lipshutz & Wilchins, P.C., Wellesley, MA.

Tiderencel, Merrill Lynch and Prudential are hereinafter referred to collectively as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: June 6, 2003.

Supplemental Statement of Claim filed on or about: June 6, 2003.

Response to Motion to Dismiss for Failure to State a Claim filed by Claimants on or about: September 10, 2003.

Claimants signed the Uniform Submission Agreement: June 17, 2003.

Motion to Dismiss for Failure to State a Claim and Answer filed by Respondent Prudential on or

about: August 21, 2003.

Respondent Prudential signed the Uniform Submission Agreement: August 5, 2003.

Joint Statement of Answer filed by Respondents Merrill Lynch and Tiderencel (for the period of time Tiderencel was employed by Merrill Lynch) filed on or about: October 3, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: July 28, 2003.

Statement of Joseph Tiderencel (for the period of time Mr. Tiderencel was employed by Prudential), filed on October 3, 2003.

Respondent Joseph Tiderencel signed the Uniform Submission Agreement: October 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: ability to contract with one suffering from a disability; unsuitability; breach of fiduciary duty; fraud, deceit, misrepresentation, and omission of material fact; and negligence. Claimants' claim involved annuities.

Unless specifically admitted in its Answer, Respondent Prudential denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Tiderencel denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested an award of actual/compensatory damages in an amount in excess of \$1,200,000.00; pre-award and post-award interest; and costs, including filing fees, expert witness fees, attorneys' fees, and other costs deemed reasonable.

Respondent Prudential requested dismissal of all of Claimants' claims; and costs and attorneys' fees.

Respondents Merrill Lynch and Tiderencel requested dismissal of all of Claimants' claims; costs and expenses; and an award expunging the NASD Central Registration Depository ("CRD") records of Respondents Joseph Tiderencel.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Respondent Joseph Tiderencel was dismissed with prejudice by Claimant.

Prior to the hearing, the parties fully and finally settled all claims by and between them.

Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph Tiderencel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Joseph Tiderencel must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. Each party shall bear its own costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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	= \$500.00
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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, Prudential Equity Group, LLC f/k/a Prudential Securities, Incorporated is a party.

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

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, Merrill Lynch Pierce Fenner & Smith Incorporated is a party.

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

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:

January 10-14, 2005, settled by parties	= \$300.00
Claimant's share	= \$75.00
Respondent Merrill Lynch's share	= \$75.00
Respondent Prudential's share	= \$75.00
Respondent Tiderencel's share	= \$75.00
(Pursuant to the parties' agreement, Respondent Merrill Lynch will assume \$37.50 of Tiderencel's share and Respondent Prudential will assume \$37.50 of Tiderencel's share.)	

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: August 4, 2004 1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$3,600.00
Pre-hearing conferences: January 20, 2004 1 session
July 29, 2004 1 session
December 23, 2004 1 session

Total Forum Fees = \$4,050.00

1. Pursuant to the parties' agreement, Claimants have jointly and severally been assessed \$1,012.50 of the forum fees.

2. Pursuant to the parties' agreement, Respondent Merrill Lynch has been assessed \$1,012.50 of the forum fees.
3. Pursuant to the parties' agreement, Respondent Prudential has been assessed \$1,012.50 of the forum fees.
4. Pursuant to the parties' agreement, Respondent Tiderencel has been assessed \$1,012.50 of the forum fees. Pursuant to the parties' agreement, Respondent Merrill Lynch will assume \$506.25 of Tiderencel's share and Respondent Prudential will assume \$506.25 of Tiderencel's share.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Three Day Cancellation Fee	= \$ 75.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,775.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 75.00

Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by Claimants because this office was notified by the parties that they settled this matter within eight business days of the first scheduled hearing session.

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 8,550.00
Three Day Cancellation Fee	= \$ 112.50
<u>Forum Fees</u>	<u>= \$ 1,518.75</u>
Total Fees	= \$10,181.25
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,631.25

3. Respondent Prudential is solely liable for:

Member Fees	= \$ 8,550.00
Three Day Cancellation Fee	= \$ 112.50
<u>Forum Fees</u>	<u>= \$ 1,518.75</u>
Total Fees	= \$ 10,181.25
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,631.25

All balances are due and payable to NASD Dispute Resolution.

Parties' Signatures

Donald A. Smith

Donald A. Smith, Esq.
PEARL MARLARNEY SMITH, P.C.
Attorney for Claimant,
Joseph R. Gannett IRA

01/14/05

Signature Date

Michael B. Cosentino, Esq.
SKEGEL, LIPSHUTZ & WILCHINS, P.C.
Attorney for Respondents,
Prudential Securities, Inc. and Joseph Tiderencel

Signature Date

Bryan I. Reyhani, Esq.
LOEB & LOEB, LLP
Attorney for Respondent,
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Signature Date

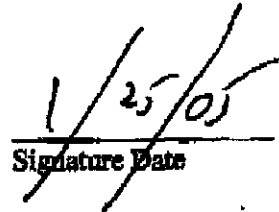
Parties' Signatures

Donald A. W. Smith, Esq.
PEARL MARLARNEY SMITH, P.C.
*Attorney for Claimant,
Joseph R. Gennett IRA*



Michael B. Cosentino, Esq.
SEEGEL, LIPSHUTZ & WILCHINS, P.C.
*Attorney for Respondents,
Prudential Securities, Inc. and Joseph Tiderencel*

Signature Date



Signature Date

Bryan L Rcyhani, Esq.
LOEB & LOEB, LLP
*Attorney for Respondent,
Merrill Lynch, Pierce, Fenner & Smith Incorporated*

Signature Date

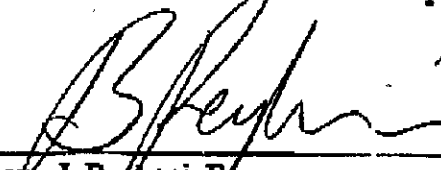
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Donald A. W. Smith, Esq.
PEARL MARLARNEY SMITH, P.C.
Attorney for Claimant,
Joseph R. Gennett IRA

Signature Date

Michael B. Cosentino, Esq.
SEEGEL, LIPSHUTZ & WILCHINS, P.C.
Attorney for Respondents,
Prudential Securities, Inc. and Joseph Tiderencel

Signature Date



Bryan I. Reisman, Esq.
LOEB & LOEB, LLP
Attorney for Respondent,
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Signature Date

1/25/05

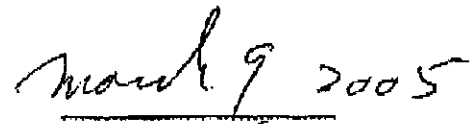
ARBITRATION PANEL

W. Bruce Newman	-	Public Arbitrator, Presiding Chair
Michael A. Orticele	-	Public Arbitrator
Edward LaVarnway	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



W. Bruce Newman
Public Arbitrator, Presiding Chair



Signature Date

Michael A. Orticele
Public Arbitrator

Signature Date

Edward LaVarnway
Non-Public Arbitrator

Signature Date

March 23, 2005

Date of Service (For NASD office use only)

ARBITRATION PANEL

W. Bruce Newman	-	Public Arbitrator, Presiding Chair
Michael A. Orticelle	-	Public Arbitrator
Edward LaVarnway	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

W. Bruce Newman
Public Arbitrator, Presiding Chair

Signature Date



Michael A. Orticelle
Public Arbitrator

Signature Date

Edward LaVarnway
Non-Public Arbitrator

Signature Date

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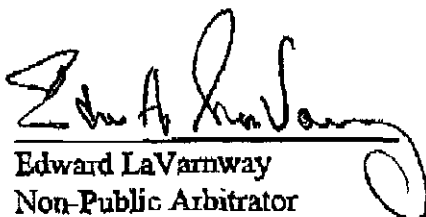
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Signature Date

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Public Arbitrator

Signature Date



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Signature Date

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