

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Harry Cohen, Individually, and the Harry Cohen Trust, Harry Cohen and Cynthia Alba,
Co-Trustees (Claimants) v. Prudential Equity Group, Inc. f/k/a Prudential Securities, Inc.
and John T. Day (Respondents)

Case Number: 03-04923

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimants Harry Cohen, Individually ("Cohen") and the Harry Cohen Trust, Harry Cohen and Cynthia Alba, Co-Trustees ("Harry Cohen Trust") hereinafter collectively referred to as "Claimants": Philip M. Giordano, Esq., Giordano, Champa & Powers, LLP, Boston, MA.

Respondents Prudential Equity Group, Inc. f/k/a Prudential Securities, Inc. ("Prudential") and John T. Day ("Day") hereinafter collectively referred to as "Respondents": Michael B. Cosentino, Esq., Seegel, Lipshutz & Wilchins, P.C., Wellesley, MA.

CASE INFORMATION

Statement of Claim filed on or about: July 3, 2003.

Claimants' Emergency Motion for Leave to Conduct Video-Deposition of Claimant Harry Cohen filed on or about: July 3, 2003.

Claimants' Cross-Motion, in the alternative, for Leave to Amend filed on or about: September 12, 2003.

Claimants' Memorandum in Opposition to Respondents' Motion to Dismiss for Failure to State a Claim and Cross-Motion for Leave to Amend filed on or about: September 12, 2003.

Claimants signed the Uniform Submission Agreement: July 2, 2003.

Joint Statement of Answer and Motion to Dismiss for Failure to State a Claim filed by Respondents on or about: September 2, 2003.

Respondents' Opposition to Claimants' Emergency Motion for Leave to Conduct Video-Deposition of Claimant Harry Cohen filed on or about: July 23, 2003.

Respondent Prudential signed the Uniform Submission Agreement: September 2, 2003.

Respondent Day signed the Uniform Submission Agreement: September 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violation of federal securities laws; violation of state securities laws; breach of contract; breach of fiduciary duty; fraud and deceit; negligent misrepresentation; gross negligence; negligence; breach of duty of reasonable care and fair practice; breach of Prudential's duty to supervise; and Prudential's control person liability. Claimants' claims involved unspecified securities.

Unless specifically admitted in their Answer and Motion to Dismiss for Failure to State a Claim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested unspecified compensatory damages for the losses sustained as a result of Respondents' violations of federal and state securities laws; unspecified compensatory damages as a result of Respondents breaches; unspecified compensatory damages for Respondents' unjust enrichment; lost economic opportunity; costs, including the NASD's filing fee, hearing deposit, prehearing conference costs, forum fees, and attorneys' fees; punitive damages in the amount of \$600,000.00; grant, order, restrain, and enjoin the Respondents temporarily, preliminarily, and permanently, and grant the Claimants such equitable relief as may be just and proper; and any additional relief which the Panel deems just and proper.

Respondents requested that the Claimants' Statement of Claim be dismissed and for the Claimants to submit a more definite statement in conformity with NASD Rule 10314; that an award be entered in Respondents' favor on all claims asserted by the Claimants; attorneys' fees and costs; and that all references of this matter be expunged from the record of Respondent Day.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants moved to permit testimony of Robert Shannon by telephone; Respondents stipulated. The Panel granted the motion.

Claimants moved to present videotape of Harry Cohen as their direct testimony; Respondents objected. The Panel granted the motion.

Claimants made a Motion in Limine to exclude Respondents from presenting any evidence. The Panel denied the Motion.

Claimants moved to limit the duration of Respondents' cross-examination of Claimant Harry Cohen. The Panel denied the motion, but urged the Respondents to be respectful of his health and age.

Respondents moved to require the production of documents by Witness Epstein. There was no ruling as the parties sought to resolve.

Respondents moved to allow testimony of Halloran by telephone. The Panel granted the motion.

Both parties moved for sanctions and attorneys' fees based on pre-hearing discovery issues. The Panel reserved any decision on sanctions for its final order.

The Panel and parties convened at the apartment of Claimant Cohen to take his testimony due to his age.

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.

AWARD

After considering the pleadings, and 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. Claimants' claims are denied in their entirety.
2. Respondent Prudential is liable for and shall pay to Claimants the sum of \$375.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
3. 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
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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 person at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, Inc. f/k/a Prudential Securities, Inc. 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. 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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 1,350.00
Pre-hearing conferences:	
March 24, 2004	1 session
July 15, 2004	1 session
July 30, 2004	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
December 12, 2003	1 session
August 13, 2004	1 session
Seven (7) Hearing sessions @ \$1,200.00	= \$ 8,400.00
Hearing Dates:	
August 10, 2004	2 sessions
August 11, 2004	2 sessions
August 12, 2004	3 sessions
Total Forum Fees	= \$12,150.00

1. The Panel has assessed \$12,150.00 of the forum fees against Respondent Prudential.

Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimants	= \$ 1,200.00

As stated in the "Award" section above, Respondent Prudential is liable for and shall reimburse Claimants for the \$375.00 filing fee.

2. Respondent Prudential is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$12,150.00</u>
Total Fees	= \$19,150.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$12,150.00

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

ARBITRATION PANEL

Robert J. Ambrogi, Esq.	-	Public Arbitrator, Presiding Chairperson
Jeffrey G. Sommers	-	Public Arbitrator
Richard O. Hansen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Robert J. Ambrogi, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jeffrey G. Sommers
Public Arbitrator

Signature Date

Richard O. Hansen
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

08/25/2004 12:43 FAX

NASD REGULATION

008/008

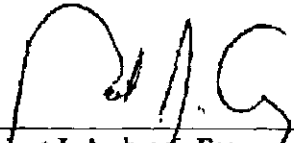
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Robert J. Ambrogi, Esq.
Public Arbitrator, Presiding Chairperson

8/25/04

Signature Date

Jeffrey G. Sommers
Public Arbitrator

Signature Date

Richard O. Hansen
Non-Public Arbitrator

Signature Date

AUGUST 27, 2004

Date of Service (For NASD Dispute Resolution use only)

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Robert J. Ambrogi, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Jeffrey G. Sommers
Public Arbitrator

27th AUGUST 2004

Signature Date

Richard O. Hansen
Non-Public Arbitrator

Signature Date

AUGUST 27, 2004
Date of Service (For NASD Dispute Resolution use only)

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Robert J. Ambrogi, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jeffrey G. Sommers
Public Arbitrator

Signature Date



Richard O. Hansen
Non-Public Arbitrator



Signature Date

AUGUST 27, 2004
Date of Service (For NASD Dispute Resolution use only)