

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

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In the Matter of the Arbitration Between:

Joseph L. Aversano, Michael Bassett, Johanna E. Caleca, Robert D. Caruso, Harold and Lillian Elsis, Joseph Fennelly, Trustee, Joseph Fennelly, Trustee, Joseph Fennelly, IRA, Vincent Horcasitis, Nancy Keane, Brian Lester, Jacqueline Minetree, Lee Minetree, Lee Minetree, SEP IRA, Marylynn Novak, Marylynn Novak, Trustee, Marylynn Novak, Special Account, Marylynn Novak Money Purchase Plan, Marylynn Novak SEP Account, Andrew Towner, Hal Zwick, Hal Zwick Pledge Account (Claimants) v. Prudential Equity Group, LLC, Wachovia Securities, LLC, and Mary Ellen Kay (Respondents)

Case Number: 03-05171

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Joseph Aversano ("Aversano"), Michael Bassett ("Bassett"), Johanna E. Caleca ("Caleca"), Robert D. Caruso ("Caruso"), Harold and Lillian Elsis ("H & L Elsis"), Joseph Fennelly, Trustee ("Fennelly Trustee"), Joseph Fennelly, IRA (Fennelly, IRA), Vincent Horcasitis ("Horcasitis"), Nancy Keane ("Keane"), Brian Lester ("Lester"), Jacqueline Minetree ("J. Minetree"), Lee Minetree, SEP IRA ("Minetree SEP"), Marylynn Novak ("M. Novak"), Marylynn Novak, Trustee ("Novak Trustee"), Marylynn Novak, Special Account ("Novak Special Account"), Marylynn Novak Money Purchase Plan ("Novak Purchase Plan"), Marylynn Novak SEP Account ("Novak SEP Account"), Andrew Towner ("Towner"), Hal Zwick ("Zwick"), and Hal Zwick Pledge Account ("Zwick Pledge Account"): Timothy J. Dennin, Esq., Timothy J. Dennin, P.C., Northport, NY.

Respondent Prudential Equity Group ("Prudential Equity") and Wachovia Securities LLC ("Wachovia") hereinafter collectively referred to as "Respondents": Frank J. Cuccio, Esq., Bressler, Amery & Ross, P.C., New York, New York.

Mary Ellen Kay ("Kay"): Andrew Sidman, Esq., Butler, Fitzgerald & Potter, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about July 16, 2003.

Aversano signed the Uniform Submission Agreement: July 7, 2003.

Bassett signed the Uniform Submission Agreement.

Caleca signed the Uniform Submission Agreement: July 9, 2003

Caruso signed the Uniform Submission Agreement: July 7, 2003.

H & L Elsis signed the Uniform Submission Agreement: April 25, 2003.

Fennelly Trustee signed the Uniform Submission Agreement: July 11, 2003.

Fennelly, IRA signed the Uniform Submission Agreement: July 11, 2003.  
Horcasitis signed the Uniform Submission Agreement: April 22, 2003.  
Keane signed the Uniform Submission Agreement.  
Lester signed the Uniform Submission Agreement.  
Minetree signed the Uniform Submission Agreement: April 20, 2003.  
Minetree SEP signed the Uniform Submission Agreement: April 20, 2003.  
Novak signed the Uniform Submission Agreement.  
Novak Trustee signed the Uniform Submission Agreement.  
Novak Special Account signed the Uniform Submission Agreement.  
Novak Purchase Plan signed the Uniform Submission Agreement.  
Novak SEP Account signed the Uniform Submission Agreement.  
Towner signed the Uniform Submission Agreement: May 16, 2003.  
Zwick signed the Uniform Submission Agreement: April 21, 2003.  
Zwick Pledge Account signed the Uniform Submission Agreement: April 21, 2003.

Joint Statement of Answer filed by Respondents Prudential Equity and Wachovia on or about November 20, 2003.

Prudential signed the Uniform Submission Agreement: January 29, 2004.

Wachovia did not file a Uniform Submission Agreement.

Statement of Answer filed by Respondent Kay on or about October 20, 2003.

Kay signed the Uniform Submission Agreement: October 16, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; violation of SEC Rule 10(b)-5 of the 1934 Act; unsuitable recommendations; negligence; and, failure to supervise.

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

Unless specifically admitted in her Answer, Respondent Kay denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$24,323,280.40 plus interest, costs, punitive damages, and attorneys' fees.

Respondents requested that the claim be dismissed in its entirety.

Respondent Kay requested that the claim be dismissed in its entirety.

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

Respondent Wachovia did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by

the determination of the Panel on all issues submitted.

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

### **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 an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have amicably resolved their differences and have requested this Stipulated Award.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mary Ellen Kay'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 Mary Ellen Kay must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
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	= \$ 1,200.00
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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. Accordingly, Prudential Equity Group, LLC, and Wachovia Securities, LLC, are parties.

#### **Prudential Equity Group, LLC's share**

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$5,500.00

Wachovia Securities, LLC

Member surcharge = \$3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,500.00

**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:

One (1) Pre-hearing conference session with Panel @ \$1,200.00 per session  
= \$ 1,200.00

Pre Hearing Conference: February 14, 2004 1 session

Total Forum Fees = \$ 1,200.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally against the Claimants.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against the Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 600.00

Forum Fees = \$ 600.00

Total Fees = \$ 1,200.00

Less payments = \$ 1,800.00

Refund Due the Claimants = \$ 600.00

2. Respondent Wachovia is solely liable for:

Member Fees = \$ 9,500.00

Total Fees = \$ 9,500.00

Less payments = \$ 9,500.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent Prudential is solely liable for:

Member Fees = \$ 9,500.00

Total Fees = \$ 9,500.00

Less payments = \$10,600.00

Refund Due Prudential = \$ 1,100.00

4. Respondents are jointly and severally liable for:

Forum Fees	= \$	600.00
Total Fees	= \$	600.00
Less payments	= \$	600.00
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**

John J. O'Neill	-	Public Arbitrator, Presiding Chairperson
Marguerite B. Filson	-	Public Arbitrator
Clifford A. Harwick	-	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, which is my award.

\_\_\_\_\_  
John J. O'Neill  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Marguerite B. Filson  
Public Arbitrator

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

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Clifford A. Harwick  
Non-Public Arbitrator

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

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Date of Service (For NASD Dispute Resolution use only)

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Date of Service (For NASD Dispute Resolution use only)

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Date of Service (For NASD Dispute Resolution use only)