

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Ruth B. Ostroff

Case Number: 03-05397

Name of the Respondents  
Prudential Securities, Inc. n/k/a Prudential  
Equity Group, LLC and  
J. Scott Miller

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Ruth B. Ostroff, hereinafter referred to as "Claimant", was represented by Scott Alan George, Sheller, Ludwig & Badey, P.C., Philadelphia, Pennsylvania.

Respondents, Prudential Securities, Inc. n/k/a Prudential Equity Group, LLC ("Prudential") and J. Scott Miller ("Miller"), hereinafter referred to as "Respondents", were represented by Marianne Johnston, Esq., Stradley Ronon Stevens & Young, LLP, Cherry Hill, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on July 23, 2003.

Claimant signed the Uniform Submission Agreement on July 14, 2003.

Statement of Answer filed by Respondent Prudential on September 15, 2003.

Statement of Answer filed by Respondent Miller on October 3, 2003.

A representative of Respondent Prudential signed the Uniform Submission Agreement on September 12, 2003.

Respondent Miller signed the Uniform Submission Agreement on October 2, 2003.

Motion to Dismiss Claimant's Statement of Claim Pursuant to Section 10304 of the NASD Code of Arbitration filed by Respondent Prudential on September 15, 2003.

Motion to Dismiss Claimant's Statement of Claim Pursuant to Section 10304 of the NASD Code of Arbitration filed by Respondent Miller on October 2, 2003.

Opposition of Claimant Ruth B. Ostroff to Respondents' Motions to Dismiss filed on October 13, 2003.

Reply of Respondents to Opposition of Claimant to Respondents' Motion to Dismiss filed on January 23, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unauthorized trading; unsuitability; vicarious liability; and, failure to supervise and otherwise ensure full disclosure and legal compliance. The causes of action relate to the purchase of a municipal bond.

Unless specifically admitted in its Answer, Respondent Prudential denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; estoppel; failure to mitigate; authorization; and, ratification.

Unless specifically admitted in his Answer, Respondent Miller denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount exceeding \$ 65,000.00 but less than \$100,000.00 plus interest, costs and such other relief as the arbitrators see fit and just to award.

Respondent Prudential requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim.

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

On February 5, 2004, the Panel denied without prejudice Respondents' Motions to Dismiss.

At the hearing on the merits, Respondents moved to dismiss the Statement of Claim. The Panel denied the motion.

### **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 denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein 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 = \$225.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Prudential is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: February 5, 2004 1 session	

Two (2) Hearing sessions @ \$750.00	= \$1,500.00
Hearing Date: July 7, 2004 2 sessions	

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Total Forum Fees	= \$2,250.00
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1. The Panel has assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$562.50 of the forum fees to Respondent Prudential.
3. The Panel has assessed \$562.50 of the forum fees to Respondent Miller.

#### **Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,350.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 375.00

2. Respondent Prudential is assessed and shall pay:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$4,112.50
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

3. Respondent Miller is assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

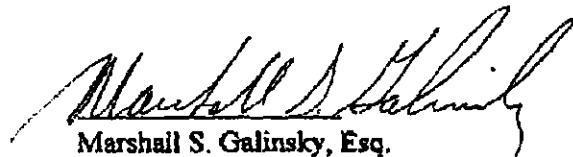
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

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**ARBITRATION PANEL**

Marshall S. Galinsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph L. Farrell, Jr., Esq.	-	Public Arbitrator, Panelist
John B. Ryan	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

7-30-04  
Signature Date

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Joseph L. Farrell, Jr., Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
John B. Ryan  
Non-Public Arbitrator, Panelist

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

8/2/04  
Date of Service (For NASD Dispute Resolution office use only)

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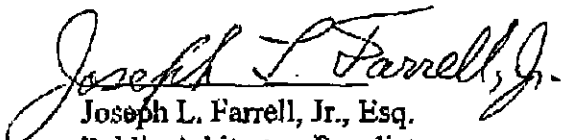
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Signature Date

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John B. Ryan  
Non-Public Arbitrator, Panelist

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8/2/04  
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29/2004-18:30 FAX 202 728 8082

NASD DISPUTE RESOLUTION

008/008

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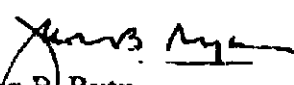
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