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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Melvin Fein IRA DTD 3/12/01  
Toby Fein IRA DTD 3/23/01  
Melvin and Toby Fein, JTWROS

Case Number: 03-06117

Names of the Respondents  
Prudential Equity Group, LLC  
Mark Schreiber  
Edward Radosh

Hearing Site: Boca Raton, FL

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

**REPRESENTATION OF PARTIES**

For Melvin Fein IRA DTD 3/12/01 ("MFIRA"), Toby Fein IRA DTD 3/23/01 ("TFIRA") and Melvin and Toby Fein, JTWROS ("M&TF"), hereinafter referred to as "Claimants": John T. Getz, Esq., Feldman & Getz, LLP, Boca Raton, Florida.

For Prudential Equity Group, LLC ("PEG"), Mark Schreiber ("Schreiber") and Edward Radosh ("Radosh"), hereinafter referred to as "Respondents": John S. Barr and Anne B. McCray, McGuireWoods LLP, Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on or about: August 18, 2003.

Claimants signed the Uniform Submission Agreement: August 14, 2003.

Statement of Answer filed by Respondents on or about: November 26, 2003.

Respondents PEG, Schreiber and Radosh did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimants brought claims for: 1) breach of contract; 2) violation of Section 517.301, Florida Statutes, 3) actual and constructive fraud; 4) negligence and gross negligence, 5) breach of fiduciary duty; 6) failure to supervise; 7) negligent hiring and retention; and 8) respondeat superior liability. The causes of action relate to the purchase of the following mutual funds: MFS Series Trust VII Capital Opportunity, Eaton Vance Growth Trust, EV Marathon World wide Health Science Fund, Davis NY Venture Fund Class B and Van Kampen Emerging Growth Fund Class B.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the

Statement of Claim and asserted the following defenses: 1) failure to state a claim; 2) suitability of the investment; 3) contributory negligence; 4) assumption of risk; 5) lack of fiduciary duty; 6) good faith, 7) statute of limitations; 8) ratification; 9) estoppel, 10) waiver; 11) release; 12) failure to mitigate; 13) lack of intent; 14) lack of scienter or breach of duty of care or loyalty; 15) lack of proximate cause; 16) laches; 17) unclean hands; and 18) lack of misrepresentation or reasonable reliance.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$120,000.00, plus interest from the date of purchase or reasonable market return, rescission under Florida Statutes 517.211, disgorgement of all commissions and fees, plus interest, all costs and expenses associated with this proceeding, full reimbursement of all filing and forum fees, reasonable attorney's fees, punitive damages and all other relief as is deemed just and proper.

Respondents requested that the Statement of Claim be dismissed, that they be granted their costs and expenses associated with the arbitration, and that the undersigned arbitrators (the "Panel") award them such other relief as is just and proper.

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

Respondents PEG, Schreiber and Radosh did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about October 11, 2004, Claimants' counsel advised NASD Dispute Resolution that the parties had settled the arbitration proceeding.

On or about October 18, 2004, the parties submitted a proposed Stipulated Award for execution by the Panel that requested expungement of this matter from the registration records of Respondent Radosh maintained by the NASD Central Registration Depository ("CRD").

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

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims in this matter shall be resolved in accordance with the parties' confidential Settlement Agreement and Release;
2. Claimants hereby withdraw and dismiss with prejudice all claims asserted against Respondents in this case;
3. The Panel recommends the expungement of all references to the above-

captioned arbitration from Respondent Radosh's public and non-public registration records maintained by NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Radosh must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. The parties shall bear their respective costs, including attorney's fees; and
5. Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Florida Statutes Chapter 517 and Claimants' request for punitive damages, are denied in their 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	= \$ 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 person at the time of the events giving rise to the dispute. Accordingly, Respondent PEG is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during these proceedings.

#### **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 during these proceedings.

#### **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 during these proceedings.

**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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 24, 2004	1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: January 15, 2004	1 session

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Total Forum Fees	= \$1,575.00
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The Panel has assessed \$787.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$787.50 of the forum fees 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 during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Retained Hearing Session Deposit	= \$ 337.50
Pursuant to Rule 10332(f) of the Code	
<u>Forum Fees</u>	<u>= \$ 787.50</u>
<u>Total Fees</u>	<u>= \$1,425.00</u>
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent PEG is solely liable for:

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

Respondents PEG, Schreiber and Radosh are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 787.50</u>
<u>Total Fees</u>	<u>= \$ 787.50</u>
<u>Less payments</u>	<u>= \$ 787.50</u>
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**

<i>Elaine Feldman, Esq.</i>	-	Public Arbitrator, Presiding Chairperson
<i>Allen Kilik, Esq.</i>	-	Public Arbitrator
<i>Carl J. Hegner</i>	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/  
Elaine Feldman, Esq.  
Public Arbitrator, Presiding Chairperson

January 25, 2005  
Signature Date

/s/  
Allen Kilik, Esq.  
Public Arbitrator

January 24, 2005  
Signature Date

/s/  
 \_\_\_\_\_  
 Carl J. Hegner  
 Non-Public Arbitrator

January 24, 2005  
Signature Date

January 26, 2005

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

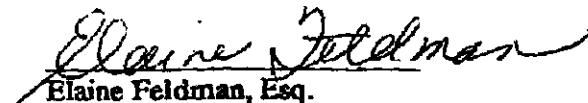
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Carl J. Hegner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Elaine Feldman, Esq.  
Public Arbitrator, Presiding Chairperson

1/25/04  
Signature Date

\_\_\_\_\_  
Allen Kilik, Esq.  
Public Arbitrator

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

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

Allen Kilik  
Allen Kilik, Esq.  
Public Arbitrator

1-24-05  
Signature Date

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Non-Public Arbitrator

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Public Arbitrator

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Carl J. Hegner  
Non-Public Arbitrator

1-24-05  
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Signature Date

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