

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Peter Bort, Virginia H. Bort, Alexandra N. Bort, and Samantha R. Bort, individually and as trustees for the Bort Family Trust UA DTD 04/30/96 EQH-173670-T9 and EQH-852470-T9, Peter Bort IRA, and Virginia H. Bort IRA, Claimants v. Prudential Securities, Inc. n/k/a Prudential Equity Group, LLC, Respondent

Case Number: 04-00111

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Robert A. Uhl, Esq.
Keith D. Fraser, Esq.
Aidikoff & Uhl
Beverly Hills, California

For Respondent:

Gregory E. Copeland, Esq.
Elizabeth H. Lindh, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Initial Statement of Claim filed: January 7, 2004

First Amended Statement of Claim filed: February 2, 2004

Claimants' Joint Uniform Submission Agreement signed: January 7, 2004

Statement of Answer filed by Respondent: April 7, 2004

Respondent's Uniform Submission Agreement signed: March 1, 2004

CASE SUMMARY

In the Initial and First Amended Statements of Claim, Claimants alleged breach of fiduciary duty, constructive fraud, failure to supervise and control, violation of federal and state securities laws, California statutory and common law, NASD Rules of Fair Practice, and NYSE rules. Claimants' allegations involved transactions in shares of Alliance Premium Growth Fund B, Alliance International Premium Growth Fund Class B, Alliance Technology Fund Class B, Alliance Growth & Income Fund Class B, Dell, and Qualcomm.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$412,595.00 in compensatory damages; unspecified punitive damages; unspecified damages pursuant to California Civil Code, Section 3345; disgorgement of all profits; lost opportunity; interest at the legal rate from the date of Respondent's wrongful conduct, up to the date of award, pursuant to California Civil Code, Section 3287(a); and costs, including attorney's fees, pursuant to California Civil Code, Section 1717(a) and California Welfare & Institutions Code, Sections 15610.27, 15657 and 15657.1.

Respondent requested dismissal of the Claimants' Statements of Claim in their entirety, expungement of all reference to this matter from registrations records maintained by NASD Central Registration Depository in connection with Financial Advisors Nace Benun and Steven G. Carayanis, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

In their First Amended Statement of Claim, filed pursuant to Rule 10328(a) of the NASD Code of Arbitration Procedure ("Code"), Claimants changed the name of the Respondent from Prudential Securities, Inc., now known as Wachovia Securities, LLC to Prudential Securities, Inc., now known as Prudential Equity Group, Inc.

On January 7, 2005, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 11, 2004, Claimants filed a Motion for Sanctions equal to attorney's fees and costs in making a Motion to Compel the production of documents. On August 24, 2004, Respondents filed an opposition to the motion. On September 8, 2004, the Chair deferred ruling on the Motion for consideration by the full Panel at the conclusion of the hearing.

FINDINGS

This was a difficult situation for the Claimants, with whom we sympathize, and the resolution was not easy. The law suggests several avenues of redress, which were forcefully explored by counsel. We are nevertheless constrained to follow the facts of this case and on that analysis the Respondent prevails.

The Arbitration Panel finds that the Claimants did not establish their position by a preponderance of the evidence. In some cases, the evidence was conflicting; in others it was satisfactorily explained. Still other behavior by the Borts themselves effectively undercut their claim. And while different action by Respondent might have avoided the resulting loss, the same was true of Mrs. Bort. Prudential did not act with great wisdom and foresight, but it did not act wrongfully. Mrs. Bort cannot shift her own responsibility to read what she signed and to review her accounts into a cause of action against Prudential. We think there was ample information to support what the Borts did, and ample information also available to the Borts to support making changes, if they had wanted to. We question whether changes would have been made in any case, at the decision points, and we do not see the Borts as distinct from millions of other investors who fell victim to the marketplace.

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

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety for the reason that Claimants failed to satisfy their burden of proof.
2. The Panel grants Claimants' Motion for Sanctions; therefore, Respondent is liable to and shall pay Claimants \$875.00 in attorneys' fees.
3. The Parties shall bear their respective costs, including attorney's fees.
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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Prudential Securities, Inc. n/k/a Prudential Equity Group, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
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Pre-hearing conference:	August 31, 2004	1 session
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One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
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Pre-hearing conference:	June 21, 2004	1 session
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Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
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Hearings:	February 16, 2005	2 sessions
	February 17, 2005	2 sessions
	February 18, 2005	2 sessions
	February 21, 2005	2 sessions

Total Forum Fees	= \$10,575.00
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1. The Panel assessed \$5,062.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,512.50 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent requested 126 photocopies @ \$.50 per page: = \$ 63.00

Fee Summary

1. Claimants are jointly and severally liable for the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,362.50
Less payments	= \$ (1,425.00)
Balance Due NASD Dispute Resolution	= \$ 3,937.50

2. Respondent is solely liable for the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,512.50
Administrative Costs	= \$ 63.00
Total Fees	= \$10,775.50
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 5,575.50

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

ARBITRATION PANEL

Kirtley M. Thiesmeyer, Esq.	-	Public Arbitrator, Presiding Chair
Dennis A. Torres	-	Public Arbitrator
Kenneth I. Rosenblum	-	Non-Public Arbitrator

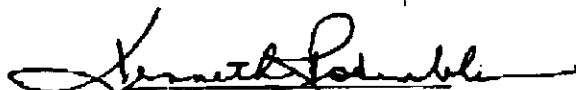
Concerning Arbitrators' Signatures

Kirtley M. Thiesmeyer
Chair, Public Arbitrator

Signature Date

Dennis A. Torres
Public Arbitrator

Signature Date


Kenneth I. Rosenblum
Non-Public Arbitrator

3/2/05
Signature Date

03/02/05
Date of Service

ARBITRATION PANEL

Kirtley M. Thiesmeyer, Esq.	-	Public Arbitrator, Presiding Chair
Dennis A. Torres	-	Public Arbitrator
Kenneth I. Rosenblum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kirtley M. Thiesmeyer
Chair, Public Arbitrator

Signature Date



Dennis A. Torres
Public Arbitrator

3 MARCH 2005

Signature Date

Kenneth I. Rosenblum
Non-Public Arbitrator


Signature Date

Date of Service

ARBITRATION PANEL

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Dennis A. Torres	-	Public Arbitrator
Kenneth I. Rosenblum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Kirtley M. Thiesmeyer
Chair, Public Arbitrator

2 MAR 2005
Signature Date

Dennis A. Torres
Public Arbitrator

Signature Date

Kenneth I. Rosenblum
Non-Public Arbitrator

Signature Date

3/02/05
Date of Service