

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Herbert Andrew Boerstling

Case Number: 04-00611

Names of the Respondents

Prudential Equity Group, LLC

Robert S. Wright

Sheldon Ray, Jr.

Douglas Richards

Forrest Williams

Hearing Site: Washington, D.C.

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Nature of the Dispute: Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant, Herbert Andrew Boerstling, hereinafter referred to as "Claimant", was represented by James G. Green, Jr., Esq., Pepe & Hazard, LLP, Hartford, Connecticut.

Respondents, Prudential Equity Group, LLC ("Prudential"), Robert S. Wright ("Wright"), Sheldon Ray, Jr. ("Ray"), Douglas Richards ("Richards") and Forrest Williams ("Williams"), hereinafter collectively referred to as "Respondents", were represented by John Barr, Esq., McGuire Woods, LLP, Richmond, Virginia.

**CASE INFORMATION**

Amended Statement of Claim filed on February 12, 2004.

Claimant signed the Uniform Submission Agreement on February 10, 2004.

Statement of Answer filed by Respondents on April 21, 2004.

A representative of Respondent Prudential signed the Uniform Submission Agreement on April 26, 2004.

Respondent Ray signed the Uniform Submission Agreement on April 29, 2004.

Respondent Richards signed the Uniform Submission Agreement on March 15, 2004.

Respondents Wright and Williams did not file Uniform Submission Agreements with NASD Dispute Resolution.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: breach of fiduciary duty, fraud, violation of NASD and NYSE rules, breach of the covenant of good faith and fair dealing, negligence, negligent misrepresentation, fraudulent misrepresentation, and breach of contract. The causes of action relate to the purchase and sale of

unspecified securities.

Unless specifically admitted in their Answer, Respondents 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; assumption of the risk; contributory negligence; Claimant's claims are barred by the doctrines of estoppel, unclean hands, ratification, and statute of limitations; authorization; and failure to mitigate damages.

### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	amount unspecified
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be dismissed.

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

Respondents Wright and Williams 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 and appeared and testified at the hearing, are bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

At the hearing on the merits, Claimant moved the Panel to dismiss Respondent Wright from the arbitration and requested expungement of all reference to this matter from Respondent Wright's Central Registration Depository ("CRD") record. The Panel granted the Motion to Dismiss and expungement request.

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, 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 Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Wright, Ray, Richards and Williams' registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members

99-09 and 99-54, Respondents Wright, Ray, Richards and Williams' 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 attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its 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	= \$ 250.00
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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 Prudential is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

#### **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 @ \$ 1,000.00	= \$ 1,000.00
Pre-hearing conference: July 15, 2004 1 session	
Six (6) Hearing sessions @ \$ 1,000.00	= \$ 6,000.00
Hearing Dates: January 31, 2005 2 sessions	
February 1, 2005 2 sessions	
February 2, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 7,000.00

1. The Panel has assessed \$ 3,500.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 3,500.00 of the forum fees to Respondent Prudential.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 3,500.00
Total Fees	= \$ 3,750.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 2,500.00

2. Respondent Citigroup is assessed and shall pay:

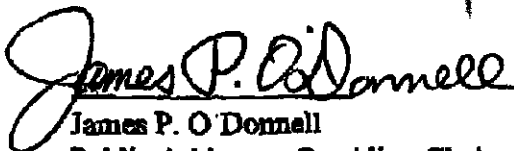
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 3,500.00
Total Fees	= \$ 7,950.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 3,500.00

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

**ARBITRATION PANEL**

James P. O'Donnell	-	Public Arbitrator, Presiding Chairperson
Glenn R. Lawrence, Esq.	-	Public Arbitrator, Panelist
C. Gregory Ellison	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

2/4/05  
Signature Date

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Glenn R. Lawrence  
Public Arbitrator, Panelist

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Signature Date

\_\_\_\_\_  
C. Gregory Ellison  
Non-Public Arbitrator, Panelist

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

February 7, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Glenn R. Lawrence  
Public Arbitrator, Panelist

2/5/05  
Signature Date

C. Gregory Ellison  
Non-Public Arbitrator, Panelist

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Public Arbitrator, Panelist

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Signature Date

  
C. Gregory Ellison  
Non-Public Arbitrator, Panelist

2-5-04  
Signature Date

February 7, 2005  
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