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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Janet Skony

Case Number: 04-00683

Names of the Respondents  
Prudential Equity Group, LLC  
f/k/a Prudential Securities, Inc.  
and John Kellar

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Janet Skony, hereinafter referred to as "Claimant": William S. Isenberg, Esq., Isenberg & Associates, Fort Lauderdale, Florida.

For Prudential Equity Group, LLC, f/k/a Prudential Securities, Inc. ("Prudential"), and John Kellar ("Kellar"), hereinafter referred to collectively as "Respondents": John S. Barr, Esq., McGuire Woods LLP, Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on or about: February 3, 2004.

Claimant signed the Uniform Submission Agreement on: December 8, 2003.

Respondents' Answer and Affirmative Defenses filed on or about: April 12, 2004.

Respondent Prudential signed the Uniform Submission Agreement on: April 7, 2004.

Respondent Kellar signed the Uniform Submission Agreement on: May 5, 2004.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) unsuitability; 2) breach of fiduciary duty; 3) violation of the Florida Securities and Investor Protection Act; 4) violation of Section 10(b) of the Securities and Exchange Act of 1934; 5) violation of Sections 12(2) and 17(a) of the Securities Act of 1933; and, 6) negligent supervision. The causes of action relate to the purchase of unspecified mutual funds in Claimant's accounts.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of approximately \$114,000.00; 2) interest; 3) costs

and attorneys' fees; 4) punitive damages in an unspecified amount; and, 5) all other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against Claimant.

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

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. Judgment in favor of Claimant and against Respondents, jointly and severally, for compensatory damages in the amount of \$38,162.51. The Panel found that three investments were suitable. However, the Panel determined that Respondents are liable for the fourth investment of \$100,000.00, which was unsuitable and a breach of fiduciary duty by Respondents. Moreover, because Prudential's manual requires supervisory approval; Claimant was a 70-year old woman; and the investment was highly concentrated in equities, Prudential is liable for negligent supervision.
2. Interest is awarded to Claimant on the above amount at Florida's statutory rate, from June 7, 2001 through the date of the Award. Respondents are liable, jointly and severally, for interest due Claimant.
3. Attorneys' fees are awarded to Claimant. Respondents, in violation of Chapter 517.301, Florida Statutes, are liable, jointly and severally, for Claimant's attorneys' fees, in an amount to be determined by a court of competent jurisdiction.
4. Costs are awarded to Claimant. Respondents are liable, jointly and severally, for Claimant's costs, in an amount to be determined by a court of competent jurisdiction.
5. Punitive damages are denied.
6. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

#### **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, Respondent Prudential is a member firm and a party.

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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

### **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:

There were no three-day cancellation fees assessed 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.

There were no injunctive relief fees assessed 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 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 the Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: July 14, 2004 1 session	
Six (6) Hearing sessions with the Panel @ \$1,125.00 per session	= \$6,750.00
Hearing Dates: March 16, 2005 2 sessions	
March 17, 2005 2 sessions	
March 18, 2005 2 sessions	
Total Forum Fees	= \$7,875.00

The Panel has assessed total forum fees of \$7,875.00 to Respondents, jointly and severally.

### **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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Prudential is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,875.00
<u>Total Fees</u>	= \$7,875.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$7,875.00

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

**ARBITRATORS**

<i>Kimberly A. Gilmour, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>James A. Porter, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Bernard Hornick</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signature**

                    /s/                      
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

3/23/2005  
Signature Date

                    /s/                      
James A. Porter, Esq.  
Public Arbitrator

3/29/2005  
Signature Date

NASD Dispute Resolution

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\_\_\_\_\_  
Bernard Hornick  
Non-Public Arbitrator

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

3/31/2005

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

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Fees Summary

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**FL ARBITRATION**

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 James A. Porter, Esq.  
 Bernard Hornick

Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

**Concurring Arbitrators' Signature**

  
 Kimberly A. Gilmour, Esq.  
 Public Arbitrator, Presiding Chairperson

3/23/05  
 Signature Date

James A. Porter, Esq.  
 Public Arbitrator

Signature Date

## NASD Dispute Resolution

Arbitration No. 04-00683

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Kimberly A. Gilmour, Esq.

James A. Porter, Esq.

Bernard Hornick

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signature

Kimberly A. Gilmour, Esq.

Public Arbitrator, Presiding Chairperson

James A. Porter, Esq.

Public Arbitrator

Signature Date

3/29/05  
Signature Date