

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Aldo Pace and Ronald Pace (Claimants) v. Morgan Stanley DW, Inc., Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. and Pasquale Capone (Respondents) v. David Pace (Third-Party Respondent)

Case Number: 04-00721

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Members and Associated Person (Initial Claim).
Member vs. Associated Person (Third-Party Claim).

REPRESENTATION OF PARTIES

Claimants Aldo Pace ("A. Pace") and Ronald Pace ("R. Pace") hereinafter collectively referred to as "Claimants": Eugene L. Small, Esq., Alonso, Andalkar & Kahn, P.C., New York, NY.

Respondent Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. ("Prudential"): Alan S. Brodherson, Esq., New York, NY.

Respondents Morgan Stanley DW, Inc. ("MSDW") and Pasquale Capone ("Capone"): John A. Tucci, Esq., previously Victor H. Sigoura, Esq., Greenberg Traurig, LLP, New York, NY.

Third-Party Respondent David Pace ("Pace") did not enter an appearance in this matter.

CASE INFORMATION

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

Amended Statement of Claim filed on or about: April 27, 2004.

Claimant signed the Uniform Submission Agreement: January 7, 2004.

Statement of Answer and Third-Party Claim filed by Respondent Prudential on or about: March 25, 2004.

Respondent Prudential signed the Uniform Submission Agreement: April 12, 2004.

Statement of Answer filed by Respondents MSDW and Capone on or about: April 23, 2004.

Respondent MSDW did not sign the Uniform Submission Agreement.

Respondent Capone did not sign the Uniform Submission Agreement.

Third-Party Respondent did not file a Statement of Answer or Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; churning; breach of fiduciary duty; common law fraud; and failure to supervise. The causes of action relate to common stocks including, Excite, Lycos, Inktomi, and various other telecommunications and telecom stocks

Unless specifically admitted in its Answer, Respondent Prudential denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Third-Party Claim, Respondent Prudential requested contribution and indemnification.

Unless specifically admitted in its Answer, Respondent MSDW denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$400,000.00 for out-of-pocket losses; the return of all commissions and margin interest charges; benefit of the bargain damages in the amount of \$100,000.00; punitive damages pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc. 514 U.S. 52 (1995) and Sladick v. Hudson General Corp., 226 A.D. 2d 263 (N.Y. 1993); pre-judgment and post-judgment interest pursuant to CPLR 5004; and costs.

Respondent Prudential requested an award dismissing the Statement of Claim; costs and expenses, including reasonable attorneys' fees; indemnification on its Counterclaim; and such other and further relief as the Arbitrators deem just and proper.

Respondents MSDW and Capone requested that the Panel dismiss the claim in its entirety; expungement of this claim from the CRD of Respondent Capone; and such other and further relief, including attorneys' fees and costs, as it deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of Prudential, the undersigned arbitrators (the "Panel") determined that Third-Party Respondent David Pace has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Third-Party Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents MSDW and Capone did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the hearing, the Panel was notified that the Claimants settled their claim against Respondents MSDW and Capone.

The parties have 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, and 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. Claimants' claims are dismissed in their entirety.
2. Prudential's Third-Party Claim is dismissed in its entirety.
3. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Respondent Prudential's Third-Party Claim filing fee	= \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. and Morgan Stanley DW, Inc. are parties.

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

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: August 3, 2004 1 session	
August 26, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 15, 2004 1 session	
Nine (9) Hearing sessions @ \$1,125.00	= \$10,125.00

Hearing Dates:	October 13, 2004	2 sessions
	October 15, 2004	2 sessions
	November 30, 2004	2 sessions
	December 1, 2004	2 sessions
	February 18, 2005	1 session

Total Forum Fees	= \$12,150.00
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1. The Panel has assessed \$6,075.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,075.00 of the forum fees against Respondent Prudential

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.

1. Claimants requested duplication of hearing tapes = \$ 60.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,075.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$ 6,435.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 5,010.00

2. Respondent Prudential is solely liable for:

Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,075.00
Total Fees	= \$12,275.00
<u>Less payments</u>	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 4,950.00

3. Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,850.00
Refund Due MSDW	= \$ 650.00

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

ARBITRATION PANEL

Mary Ann Lanzetta	-	Public Arbitrator, Presiding Chairperson
Michael R. Siebecker	-	Public Arbitrator
Harry J. Lundgren, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Mary Ann Lanzetta
Public Arbitrator, Presiding Chairperson

3/2/05

Signature Date

Michael R. Siebecker
Public Arbitrator

Signature Date

Harry J. Lundgren, Jr.
Non-Public Arbitrator

Signature Date

March 4, 2005

Date of Service (For NASD Dispute Resolution use only)

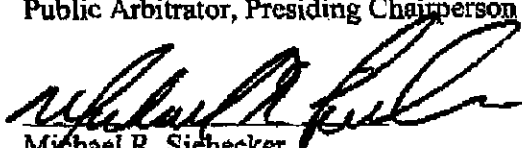
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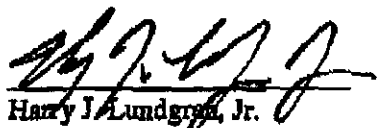
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