

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Fred D. and Amanda N. George

Case Number: 04-01128

Name of the Respondents

Prudential Equity Group, LLC; and,  
Justin T. Cummings

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Public Customers v. Member Firm and Former Associated Person

**REPRESENTATION OF PARTIES**

Claimants Fred D. and Amanda N. George, hereinafter collectively referred to as "Claimants": H. Grady Terrill, Esq. and Janna Kay Fulfer, Esq., of the firm of Craig, Terrill, Hale & Grantham, L.L.P., located in Lubbock, Texas.

Respondent Prudential Equity Group, LLC, hereinafter referred to as "Prudential": Kenneth L. Schubert, Esq. and Robert A. W. Boraks, Esq., of the firm of Garvey Schubert Barer, located in Seattle, Washington.

Respondent Justin T. Cummings, hereinafter referred to as "Cummings," did not appear.

**CASE INFORMATION**

Statement of Claim filed: February 20, 2004.

Claimants signed the Uniform Submission Agreement: February 7, 2004.

Statement of Answer filed by Respondent Prudential on: May 28, 2004.

Respondent Prudential did not file a signed Uniform Submission Agreement.

Respondent Cummings did not file a Statement of Answer or a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud; negligence; statutory fraud under §27.01 of the Business and Commerce Code; violation of Section 33-1 of the Texas Securities Act; violation of Federal Securities Laws, Section 10(b) of the Securities Exchange Act of 1934

and Rule 10b-5; breach of fiduciary duty. In addition, Claimants requested damages for the mental anguish caused by the losses in their account. The causes of action related to Cummings rapid buying and selling of securities in the Claimants' account without authorization.

Unless specifically admitted in its Answer, Respondent Prudential denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Any losses suffered by Claimants in their account were occasioned by their own investment decisions and the movement of the market prices of its securities, and not by any misconduct by Prudential;
3. Prudential reasonably supervised Claimants' account;
4. Claimants are estopped from asserting this claim against Prudential;
5. Prudential acted in good faith and with due care respecting Claimants, their investments and their accounts;
6. No statements or misrepresentations were made by Prudential to Claimants and relied upon by Claimants to their detriment;
7. Claimants failed to state a claim upon which an award of punitive damages may be made;
8. Claimants failed to mitigate their damages, if any;
9. Prudential did not make any material misrepresentations or omissions with respect to any of the investments in Claimants' accounts, and did not engage in any other fraudulent or deceitful conduct;
10. Claimants ratified their investments when they received notice of their allegedly unauthorized and failed to object in writing within ten days;
11. Claimants' account was not discretionary, and thus, Prudential did not owe respondents a fiduciary duty;
12. Claimants' claims are barred, in whole or in part, by the applicable statute of limitations;
13. While Claimants claim common law fraud and statutory fraud under §27.01, they failed to set forth any facts showing a false representation, made for the purpose of inducing them to act or enter into a contract, or that they relied on any false representation; and,
14. Claimants' negligence claim is barred by the economic loss doctrine.

**RELIEF REQUESTED**

Claimants Fred D. and Amanda N. George requested:

Compensatory Damages	In excess of \$650,000.00
Punitive Damages	\$1,500,000.00
Mental Anguish Damages	Unspecified Sum
Interest	Unspecified Sum
Attorneys' Fees	Unspecified Sum
Other Costs	Unspecified Sum
Other Monetary/Non-Monetary Relief if any:	Unspecified Sum.

Respondent Prudential requested that the claim be dismissed on the basis of failure to state any plausible claims and/or lack of timeliness, and in the alternative, and award of the following:

1. Dismiss all claims with prejudice;
2. Deny Claimants any award or recovery and award Prudential its reasonable attorneys' fees and costs associated with defense against Claimants claims; and,
3. Grant Prudential such further relief as is just and proper in the circumstances.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators determined that Respondent Justin T. Cummings properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Prudential did not file a properly executed submission to arbitration with NASD Dispute Resolution, but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and provided testimony at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Cummings did not file a properly executed submission to arbitration with NASD Dispute Resolution, but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

#### **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. Respondents Prudential Equity Group, LLC and Justin T. Cummings are jointly and severally liable for and shall pay to the Claimants, Fred D. and Amanda N. George, the sum of \$115,500.00 as compensatory damages;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees; and,
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 = \$ 500.00

**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, Prudential Equity Group, LLC is a party and the following member fees are assessed:

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**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 @ \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: August 17, 2004 1 session  
  
Four (4) Hearing sessions @ \$1,200.00 = \$ 4,800.00  
Hearing Dates: January 25, 2005 2 sessions  
January 26, 2005 2 sessions  

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Total Forum Fees = \$ 6,000.00

The Panel has assessed \$3,000.00 of the forum fees, jointly and severally, to Claimants Fred D. and Amanda N. George, and \$3,000.00 of the forum fees, jointly and severally, to Respondents Prudential Equity Group, LLC and Justin T. Cummings.

**EEE SUMMARY**

Claimants Fred D. and Amanda N. George are jointly and severally liable for:

Initial Filing Fee = \$ 500.00  
Forum Fees = \$ 3,000.00  

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Total Fees = \$ 3,500.00  
Less payments = \$ 1,700.00  

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Balance Due NASD Dispute Resolution = \$ 1,800.00

Respondent Prudential Equity Group, LLC is solely liable for:

Member Fees = \$ 8,550.00

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Less payments = \$ 8,150.00  
Balance Due NASD Dispute Resolution = \$ 0.00

Respondents Prudential Equity Group, LLC and Justin T. Cummings are jointly and severally liable for:

Forum Fees = \$ 3,000.00  
Less payments = \$ 0.00  
Balance Due NASD Dispute Resolution = \$ 3,000.00

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

**ARBITRATION PANEL**

Robert L. Chisolm - Public Arbitrator, Presiding Chairperson  
Tina E. Patterson - Public Arbitrator  
Nichole C. Ake - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Robert L. Chisolm  
Public Arbitrator, Presiding Chairperson

2-1-05

Signature Date

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Tina E. Patterson  
Public Arbitrator

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

\_\_\_\_\_  
Nichole C. Ake  
Non-Public Arbitrator

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Signature Date

2/4/05 Klu  
Date of Service (For NASD Dispute Resolution office use only)

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Less payments = \$ 8,550.00  
Balance Due NASD Dispute Resolution = \$ 0.00

Respondents Prudential Equity Group, LLC and Justin T. Cummings are jointly and severally liable for:

Forum Fees = \$ 3,000.00  
Less payments = \$ 0.00  
Balance Due NASD Dispute Resolution = \$ 3,000.00

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

**ARBITRATION PANEL**

Robert L. Chisolm - Public Arbitrator, Presiding Chairperson  
Tina E. Patterson - Public Arbitrator  
Nichole C. Ake - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Robert L. Chisolm  
Public Arbitrator, Presiding Chairperson

Signature Date

Tina E. Patterson

Tina E. Patterson  
Public Arbitrator

2/2/05

Signature Date

Nichole C. Ake  
Non-Public Arbitrator

Signature Date

2/4/05 llm

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

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Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Prudential Equity Group, LLC and Justin T. Cummings are jointly and severally liable for:

Forum Fees	= \$ 3,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

**ARBITRATION PANEL**

Robert L. Chisolm - Public Arbitrator, Presiding Chairperson  
Tina E. Patterson - Public Arbitrator  
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**Concurring Arbitrators' Signatures**

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Robert L. Chisolm  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Tina E. Patterson  
Public Arbitrator

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Signature Date

  
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