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

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*In the Matter of the Arbitration Between:*

Names of the Claimants

Danielle, Jason and Matthew Buchwald

Case Number: 04-02671

Names of the Respondents

Wachovia Securities LLC  
Prudential Equity Group, LLC

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Danielle, Jason and Matthew Buchwald, hereinafter collectively referred to as "Claimants": Rhett Traband, Esq. and Heather Siegel, Esq., Broad and Cassel, Miami, Florida.

For Wachovia Securities LLC ("Wachovia") and Prudential Equity Group, LLC ("PEG"), hereinafter collectively referred to as "Respondents": Robert A. W. Boraks, Esq. and Alexis K. Segal, Esq., Garvey Shubert Barer, Washington, DC.

**CASE INFORMATION**

Statement of Claim filed on or about: April 9, 2004.

Claimants signed the Uniform Submission Agreement: April 6, 2004.

Statement of Answer filed by Respondent PEG on or about: July 7, 2004.

Respondent PEG signed the Uniform Submission Agreement: October 11, 2004.

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

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Chapter 517, Florida Statutes; 2) common law fraud; 3) breach of fiduciary duty; and, 4) gross negligence. The causes of action relate to the purchase and sale of various stocks in Claimants' account, including, but not limited to, At Home, Connecting.com, Ariel, VK Aggressive Growth Internet, Ariba, Etoys, Dell, Compaq, JDS Uniphase, Oracle and Sycamore Networks.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$600,000.00, punitive damages in an amount to be determined, pre-judgment interest at the legal rate, costs including, but not limited to, filing fees, attorneys'

fees, forum fees, expert witness fees and for such other and further relief as this Panel deemed just and proper. Respondent PEG requested that the Statement of Claim be dismissed, with prejudice, plus an award of fees, costs, attorney's fees and such other and further relief as this Panel deemed just.

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

On June 16, 2004, Claimants notified NASD Dispute Resolution that, due to the merger of Prudential Securities division of Prudential Financial Inc. and Wachovia Securities, they had named both firms as Respondents. However, based on additional information received, they determined that Respondent PEG is the only proper Respondent.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent PEG is found liable for breach of fiduciary duty and shall pay to Claimants compensatory damages in the amount of \$100,000.00, pre-judgment interest specifically excluded.

Any and all claims for relief not specifically addressed herein, including the parties' requests for attorneys' fees and Claimants' request for punitive damages and damages pursuant to Chapter 517, Florida Statutes, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 375.00
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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 PEG is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

NASD Dispute Resolution waived the member fees that were assessed to Wachovia due to Claimants' correspondence stating that Wachovia was not a proper party to name in this proceeding:

Member Surcharge	= \$2,250.00 - waived
Pre-hearing process fee	= \$ 750.00 - waived

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**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:

No cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: December 28, 2004 1 session	

One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: August 17, 2004 1 session	

Four (4) Hearing sessions with the Panel @ \$1,200.00	= \$4,800.00
Hearing Dates: February 1, 2005 2 sessions	
February 2, 2005 2 sessions	

Total Forum Fees	= \$6,450.00
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The Panel has assessed \$3,225.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$3,225.00 of the forum fees to Respondent PEG.

**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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,225.00
Total Fees	= \$ 3,600.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,025.00

Respondent PEG is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 3,225.00
Total Fees	= \$ 10,225.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 3,225.00

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

**ARBITRATION PANEL**

<i>Michael R. Emery, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Rosemarie Ann Jannuzzi, Esq.</i>	-	<i>Public Arbitrator</i>
<i>John E. Hiro</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Michael R. Emery, Esq.  
Public Arbitrator, Presiding Chairperson

02/07/05  
Signature Date

/s/  
Rosemarie Ann Jannuzzi, Esq.  
Public Arbitrator

02/07/05  
Signature Date

/s/  
John E. Hiro  
Non-Public Arbitrator

02/07/05  
Signature Date

02/07/05  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-02671  
Award Page 4

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Public Arbitrator, Presiding Chairperson

2-7-05

Signature Date

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