

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-02800

Nancy L. Branch, as Executor of the  
Estate of Beverly L. Branch, Deceased

Name of the Respondents

Hearing Site: Dallas, Texas

Prudential Equity Group, LLC and  
John A. Mogk

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**NATURE OF THE DISPUTE**

Public Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimant Nancy L. Branch, as Executor of the Estate of Beverly L. Branch, Deceased, hereinafter referred to as "Claimant": E. Steve Watson, Esq. of Allen, Texas.

Respondents Prudential Equity Group, LLC ("Prudential") and John A. Mogk ("Mogk"), hereinafter collectively referred to as "Respondents": Michael B. Consentino, Esq. of the firm of Seegel Lipshutz & Wilchins, P.C., located in Wellesley, Massachusetts.

**CASE INFORMATION**

Statement of Claim filed: April 12, 2004.

Claimant signed the Uniform Submission Agreement: April 2, 2004.

Joint Statement of Answer filed by Respondents Prudential and Mogk on: February 17, 2005.

Respondent Prudential signed the Uniform Submission Agreement: February 14, 2005.

Respondent Mogk signed the Uniform Submission Agreement: February 9, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of the federal and state securities laws; violations of the Texas Deceptive Trade Practices Act; negligence/gross negligence/breach of industry standards; breach of contract; breach of duty, fiduciary or otherwise; fraud and

fraudulent concealment; *respondeat superior*; and, negligent failure to supervise Respondent Mogk. These causes of action related to Respondents purchase and allocation of the Claimant's portfolio to individual stocks and stock funds instead of other investments.

Unless specifically admitted in their Answer, Respondents 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. Claimant is barred from any recovery because she directed, approved, authorized, consented to, acquiesced in, and/or ratified all transactions in the accounts;
3. Claimant has waived any claims Claimant may have, which are denied, to seek relief against Respondents;
4. The Respondents discharged their responsibilities to Claimant in good faith, in a professional and ethical manner, and all of the Respondents' actions were within the parameters of accepted procedure and all applicable exchange and governmental regulations;
5. The claims are barred by the Claimant's failure to mitigate damages;
6. Claimant's alleged losses, if any, were caused by Claimant's own conduct and are banned by the doctrines of contributory/comparative negligence;
7. The claims are barred by the doctrines of laches, waiver and/or estoppel;
8. Claimant lacks standing and/or legal capacity to assert any claims against the Respondents;
9. Claimant did not rely to her detriment on any action or inaction of the Respondents or any act or omission legally attributable to the Respondents;
10. The claims are barred by the applicable statute of limitations;
11. The claims are barred by the doctrine of unclean hands;
12. All risks concerning Claimant's investments were properly disclosed and Claimant knowingly, willingly and voluntarily assumed those risks;
13. Claimant is barred from any recovery based upon purported violations of industry rules because there is no private right of action for violation of industry rules, including NASD rules;
14. An award of enhanced damages against the Respondents would be improper on the facts of this case as a matter of both fact and law;
15. Claimant, at all relevant times, had or should have had full knowledge of all material facts concerning the investments Claimant made, including the nature of the investments and the associated risks;
16. The Respondents did not make any misrepresentations or omissions with respect to the investments made in Claimant's accounts;
17. To the extent any losses or diminution in the value of Claimant's investments have occurred, the Respondents are not liable for such losses and diminution because they were within the risks Claimant chose to assume;
18. To the extent Claimant's investments have diminished in value, such diminution is the result, in whole or in part, of unforeseen price fluctuations in volatile securities markets (and the economy in general) in which Claimant knowingly and willingly participated;
19. The purported wrongdoing on the part of the Respondents was not the proximate cause of the losses for which Claimant seeks recovery;

20. Claimant's comparative fault, lack of diligence, and failure to conduct Claimant's own affairs reasonably, prudently and responsibly bar any recovery of damages;
21. Prudential adequately and reasonably supervised Claimant's accounts and had no duty to specially supervise them;
22. Claimant's claims fail because Claimant did not justifiably rely upon any alleged misstatements or omissions by the Respondents;
23. Claimant's accounts were not invested in contravention of Claimant's investment objectives;
24. Claimant has failed to plead or establish a fiduciary relationship existed with the Respondents; and,
25. Based upon her own actions, the Claimant's Statement of Claim must be dismissed under the theory of *In Pari Delecto*.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 255,480.00
Punitive Damages	As determined by the Panel or pursuant to the Texas Deceptive Trade Practices Act
Interest	Pre-judgment and post-judgment at the maximum rate allowed by law
Attorneys' Fees	Pursuant to the post-hearing submission, \$14,776.11 in fees and expenses
Other Costs	As determined by the Panel, including any expert witness fees
Other Monetary/Non-Monetary Relief if any:	Additional recovery to offset any tax liability.

Respondents requested:

1. That an award be entered in their favor on all claims asserted by the Claimant;
2. That the Respondents recover an award against the Claimant which includes attorneys' fees and costs incurred in the defense of this claim;
3. That the Panel enter an order expunging Claimant's allegations concerning Respondent Mogk from the CRD system; and,
4. For such other and further relief as the Panel deems just and proper.

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

At the hearing, the Respondents presented a Motion to Dismiss. After considering the arguments or counsel, the Panel denied the Motion and hearing continued.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim filed by Claimant Nancy L. Branch, as Executor of the Estate of Beverly L. Branch, Deceased, is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision;
3. Any and all relief not specifically addressed herein, including punitive and/or treble 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
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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, Prudential Equity Group, LLC is a party and the following member fees are assessed:

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

#### **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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 1,350.00
Pre-hearing conferences:	
August 17, 2005	1 session
September 26, 2005	1 session

September 29, 2005 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: May 3, 2005 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00  
Hearing Dates: October 17, 2005 2 sessions  
October 18, 2005 2 sessions  
October 19, 2005 2 sessions

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Total Forum Fees = \$ 9,225.00

The Panel has assessed \$4,612.50 of the forum fees to the Claimant, Nancy L. Branch, as Executor of the Estate of Beverly L. Branch, Deceased. The Panel has assessed the remaining \$4,612.50 of the forum fees jointly and severally to Respondents Prudential Equity Group, LLC and John A. Mogk.

#### SEE SUMMARY

Claimant Nancy L. Branch, as Executor of the Estate of Beverly L. Branch, Deceased, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,612.50
Total Fees	= \$ 4,912.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,487.50

Respondent Prudential Equity Group, LLC is solely liable for:

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Prudential Equity Group, LLC and John A. Mogk are jointly and severally liable for:

Forum Fees	= \$ 4,612.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,612.50

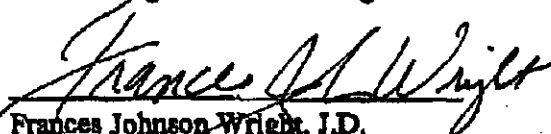
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

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**ARBITRATION PANEL**

Frances Johnson Wright, J.D. - Public Arbitrator, Presiding Chairperson  
Robert R. Marquardt, Esq. - Public Arbitrator  
Terry Landry - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Frances Johnson Wright, J.D.  
Public Arbitrator, Presiding Chairperson

11/2/05  
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Signature Date

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Robert R. Marquardt, Esq.  
Public Arbitrator

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

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Terry Landry  
Non-Public Arbitrator

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Signature Date

11/14/05   
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Date of Service (For NASD Dispute Resolution office use only)

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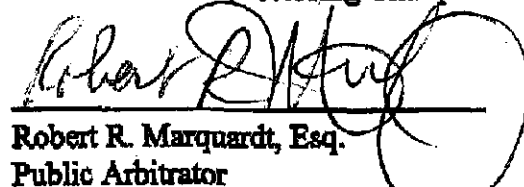
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Robert R. Marquardt, Esq.  
Public Arbitrator

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Signature Date

11-1-05

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Signature Date

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Terry Landry  
Non-Public Arbitrator

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Signature Date

11/14/05   
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