

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

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In the Matter of the Arbitration Between:

Ian J. Allena (Claimant) v. Prudential Equity Group, LLC f/k/a Prudential Securities, Inc.,  
John S. O'Donnell and Mark Hyde (Respondents)

Case Number: 04-02884

Hearing Site: Newark, New Jersey

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

**REPRESENTATION OF PARTIES**

Claimant Ian J. Allena ("Allena") hereinafter referred to as "Claimant": Richard M. Mortner, Esq., Law Offices of Richard M. Mortner, New York, NY.

Respondents Prudential Equity Group LLC f/k/a Prudential Securities, Inc. ("Prudential"), John S. O'Donnell ("O'Donnell"), and Mark Hyde ("Hyde") hereinafter collectively referred to as "Respondents": Brian Socolow, Esq., Loeb & Loeb, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 16, 2004.

Amended Statement of Claim filed on or about: May 20, 2004.

Claimant signed the Uniform Submission Agreement: March 27, 2004.

Reply to Respondents' Motion to Dismiss filed on or about: July 20, 2005.

Joint Statement of Answer filed by Respondents on or about: June 17, 2004.

Respondent Prudential signed the Uniform Submission Agreement: June 21, 2004.

Respondent O'Donnell signed the Uniform Submission Agreement: June 14, 2004.

Respondent Hyde signed the Uniform Submission Agreement: June 16, 2004.

Motion to Dismiss filed on or about: May 25, 2005

Motion to Dismiss filed on or about: July 19, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentations, suitability, failure to supervise, breach of fiduciary duty. The causes of action relate to margin calls and risky equities, including futures.

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

### **RELIEF REQUESTED**

Claimant requested: compensatory damages in the amount of \$214,849.00, interest, punitive and exemplary damages in the amount of \$644,547.00, attorneys' fees, costs, and a finding that Respondents Prudential and O'Donnell committed fraud.

Respondents requested that the claims be denied in all respects, that costs of this action be assessed against Claimant, the CRD records of O'Donnell and Hyde be expunged and for such other and further relief as the Panel deems just and proper.

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

On or about May 24, 2005, Respondents made a Motion to Dismiss. After due deliberation, the Panel denied the Motion.

On or about July 19, 2005, at the conclusion of the Claimant's case, Respondents made a Motion to Dismiss all claims against them. Claimant filed a response to the Motion on or about July 20, 2005. The Panel heard oral arguments by counsels on the Motion to Dismiss. After due deliberation on Claimant's response, the evidence presented, testimony, briefs and exhibits, the Panel granted Respondents' Motion to Dismiss.

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, 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. Claimant's claims are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John S. O'Donnell's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent John S. O'Donnell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mark Hyde's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices

to Members 04-16, Respondent Mark Hyde must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

4. Any and all relief not specifically addressed herein, including punitive and 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	= \$ 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 persons at the time of the events giving rise to the dispute. Accordingly, Prudential is a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 11-12, 2005 adjournment by Claimant	= Waived
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#### **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 Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: September 7, 2004 1 session	

Seven (7) Hearing sessions @ \$1,200.00 = \$ 8,400.00

Hearing Dates:	June 6, 2005	2 sessions
	June 7, 2005	2 sessions
	July 19, 2005	2 sessions
	July 20, 2005	1 session

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Total Forum Fees = \$ 9,600.00

1. The Panel has assessed \$4,800.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,800.00 of the forum fees to Respondent Prudential.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$ 5,175.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. Respondent Prudential is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$ 11,800.00
<u>Less payments</u>	= \$ 8,000.00
Balance Due NASD Dispute Resolution	= \$ 3,800.00

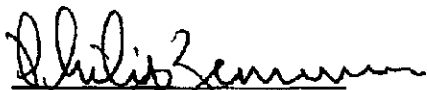
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Philip Zimmerman	-	Public Arbitrator, Presiding Chairperson
David I. Goldblatt	-	Public Arbitrator
Daniel J. Christofano	-	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.



Philip Zimmerman  
Public Arbitrator, Presiding Chairperson

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

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David I. Goldblatt  
Public Arbitrator

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

\_\_\_\_\_  
Daniel J. Christofano  
Non-Public Arbitrator

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

August 4, 2005  
Date of Service (For NASD Dispute Resolution use only)

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