

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael and Mary Kim Thomas,
Claimants,

Case Number: 04-02951

Hearing Site: Indianapolis, Indiana

v.

Prudential Securities, Inc. n/k/a/
Prudential Equity Group, LLC,
Respondents.

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Michael and Mary Kim Thomas (the "Thomases"), hereinafter collectively referred to as "Claimants": Keith L. Griffin, Esq. of Maddox Hargett & Caruso, located in Fishers, Indiana.

Prudential Securities, Inc. n/k/a Prudential Equity Group, LLC Equity Group, LLC ("Prudential"), hereinafter referred to as "Respondent": Anne B. McCray, Esq. of McGuire Woods, LLP, located in Richmond Virginia.

CASE INFORMATION

Statement of Claim filed on or about: April 21, 2004

Claimants signed the Uniform Submission Agreement: March 1, 2004

Statement of Answer filed by Prudential on or about: July 8, 2004

Prudential signed the Uniform Submission Agreement: May 21, 2004

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading, unsuitable investment, breach of contract, negligence, breach of fiduciary duty and constructive fraud, negligence and negligent supervision, violations of Indiana Securities Act and NASD Conduct Rules. The causes of action relate to shares in Xcelera stock. Claimants asserted that these trades were unauthorized and unsuitable to Claimants' financial needs and objectives.

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

1. The Statement of Claim and each cause of action contained therein fails to state facts sufficient to constitute a cause of action against Respondent upon which relief can be granted.

2. If Respondent was negligent in any way, which negligence is expressly denied, Claimants would be barred from recovery due to their contributory negligence and assumption of risk.
3. The Statement of Claim, and each cause of action contained therein, is barred by the equitable doctrines of estoppel and unclean hands.
4. The Statement of Claim, and each cause of action contained therein, is barred by the doctrine of waiver.
5. The Statement of Claim, and each cause of action therein, is barred by the equitable doctrine of ratification in that Claimants directed, authorized, consented to and ratified all transactions and strategies employed in their account.
6. At no time did Respondent exercise discretion over Claimants' account, nor did it exercise control over the account. Because Respondent merely made investment recommendations to Claimants, it is not liable for breach of fiduciary duty.
7. To the extent any claims are alleged, or are predicated upon violations of regulatory rules, including those of NASD or NYSE, such violations, which are expressly denied, do not in and of themselves state a basis for recovery of damages by an investor.
8. The Statement of Claim, and each cause of action contained therein, is barred by the applicable statute of limitations.
9. Respondent is not liable to Claimants in any amount because at all times Respondent acted properly and in good faith with regard to Claimants' account.
10. Claimants failed to mitigate any losses.
11. No sum is due and owing by Respondents to Claimants.
12. Any losses Claimants may have sustained were due to the vagaries and volatilities of the securities market and were not due to any purported wrongdoing by Respondent.
13. Respondent denies any and all allegations contained in the Statement of Claim unless specifically admitted herein. As discovery has not yet begun, all relevant facts may not be known by Respondent at this time. Respondent reserves the right to amend this Answer.

RELIEF REQUESTED

Claimants requested \$103,057.04 in compensatory damages; pre-judgment and post-judgment interest; costs and attorney's fees; punitive damages; and for such other and further relief as may be deemed just, proper and equitable.

Respondent requested that all claims made against it in the Statement of Claim be dismissed in their entirety, and costs be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing, at the close of Claimants' case, Respondent Prudential moved for directed verdict. The Panel denied Prudential's motion.

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. Respondent, Prudential Securities, Inc., n/k/a/ Prudential Equity Group, LLC, is solely liable for and shall pay Claimant, Michael Thomas, the sum of \$12,000.00 as compensatory damages, plus interest at the rate of 8.00% per

- annum to accrue from September 13, 2000 until the date the award is paid in full.
2. Respondent, Prudential Securities, Inc., n/k/a/ Prudential Equity Group, LLC, is solely liable for and shall pay Claimant, Mary Kim Thomas, the sum of \$12,800.00 as compensatory damages, plus interest at the rate of 8.00% per annum to accrue from September 13, 2000 until the date the award is paid in full.
 3. Respondent, Prudential Securities, Inc. n/k/a/ Prudential Equity Group, LLC, is solely liable for and shall pay the Claimants, Michael and Mary Kim Thomas, the sum of \$7,000.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by counsel and the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees under the Indiana Securities Act.
 4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
 5. 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
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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 Securities, Inc. n/k/a Prudential Equity Group, LLC, is a party to this proceeding and is assessed the following fees:

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:

June 22-24, 2005, adjournment by Claimants	= \$1,125.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
October 7, 2004	1 session
April 14, 2005	1 session

Three (3) Hearing sessions @ \$1,125.00	= \$3,375.00
Hearing Dates: February 28, 2006 2 sessions	
March 1, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$5,625.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$2,812.50 jointly and severally to Claimants, Michael and Mary Kim Thomas.
2. The Panel has assessed 50% of the total forum fees in the amount of \$2,812.50 solely to Respondent, Prudential Securities, Inc., n/k/a Prudential Equity Group, LLC.

Fee Summary

1. Claimants, Michael and Mary Kim Thomas, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$4,237.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50
2. Respondent, Prudential Securities, Inc. n/k/a Prudential Equity Group, LLC, is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$8,012.50
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

ARBITRATION PANEL

David Williams Russell, Esq.	-	Public Arbitrator, Presiding Chairperson
John L. Krauss	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ David Williams Russell, Esq.
David Williams Russell, Esq.
Public Arbitrator, Presiding Chairperson

3/28/06
Signature Date

/s/ John L. Krauss
John L. Krauss
Public Arbitrator

3/27/06
Signature Date

/s/ Sandra J. Bakalus
Sandra J. Bakalus
Non-Public Arbitrator

3/27/06
Signature Date

3/28/06
Date of Service (For NASD Dispute Resolution use only)

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00
 Hearing Dates: February 28, 2006 2 sessions
 March 1, 2006 1 session

Total Forum Fees = \$5625.00

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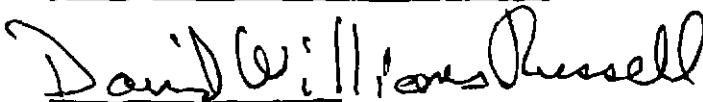
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Concurring Arbitrators' Signatures



David Williams Russell, Esq.
 Public Arbitrator, Presiding Chairperson

3-28-6
 Signature Date

 John L. Krauss
 Public Arbitrator

 Signature Date

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Arbitration No. 04-02951
Award Page 4 of 5

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John L. Krauss	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

David Williams Russell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


John L. Krauss
Public Arbitrator


Signature Date

NASD Dispute Resolution
Arbitration No. 040251
Award Date 10/2/04

S. Bakalus

Sandra L. Bakalus
Non-Public Arbitrator

3/27/06
Signature Date

Date of Service (For NASD Dispute Resolution use only)