

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

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In the Matter of the Arbitration Between:

State Street Bank & Trust Co., as Custodian for Albert Snyder IRA (Claimant) vs. American Skandia Marketing Company, Inc., Wachovia Securities, LLC, Prudential Equity Group, LLC, Pruco Securities, LLC, Prudential Investment Management Services, LLC, Main Street Management Company and, Mark Flaherty (Respondents)

Case Number: 04-03569

Hearing Site: Buffalo, New York.

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Nature of the Dispute: Customer vs. Members, and Associated Person

**REPRESENTATION OF PARTIES**

State Street Bank & Trust Co., as Custodian for Albert Snyder IRA hereinafter referred to as "Claimant": Andrea R. Polvino, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

American Skandia Marketing Company, Inc., ("American Skandia"), Pruco Securities, LLC ("Pruco") and Prudential Investment Management Services, LLC ("Prudential Investment"): Fred N. Knopf, Esq. and Ami Shah, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker LLP, White Plains, NY.

Main Street Management Company ("Main Street") and Mark Flaherty ("Flaherty"): Katherine A. Fijal, Esq., Lustig & Brown, LLP, Buffalo, NY. Respondent Main Street was previously represented by Robert J. Lane, Jr. Esq. and Catherine Grantier Cooley, Esq., Hodgson Russ, LLP, Buffalo, NY.

Wachovia Securities, LLC ("Wachovia"): Kevin Hurley, Esq., in-house counsel for Wachovia, LLC, Richmond, VA.

Prudential Equity Group, LLC ("Prudential Equity"): Patrick Gaffney, Esq., in-house counsel for Prudential Equity Group, LLC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 12, 2004.

Amended Statement of Claim filed on or about: July 28, 2004.

Second Amended Statement of Claim filed on or about: August 11, 2004.

Claimant signed the Uniform Submission Agreement: May 11, 2004.

Joint Statement of Answer filed by American Skandia, Pruco and Prudential Investment on or about: October 22, 2004.

Prudential Investment signed the Uniform Submission Agreement: September 14, 2004

American Skandia did not submit a Uniform Submission Agreement.

Pruco did not submit a Uniform Submission Agreement.

Prudential Equity did not file a Statement of Answer or Uniform Submission Agreement.

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

Statement of Answer filed by Main Street on or about: November 19, 2004.

Main Street signed the Uniform Submission Agreement: November 12, 2004.

Statement of Answer filed by Flaherty on or about: December 15, 2004.

Flaherty signed the Uniform Submission Agreement: December 7, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise, breach of contract, unsuitability and fraud. The causes of action relates to mutual funds.

Unless specifically admitted in their Answer, American Skandia, Pruco and Prudential Investment denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

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

### **RELIEF REQUESTED**

Claimant requested \$215,904.75 in compensatory damages, jointly and severally, against the Respondents plus \$28,255.87 in interest accruing from November of 2001 to March of 2003; plus additional interest at 9%; appropriate earnings and appreciation; punitive damages in an amount to be determined by the Panel; reimbursement of costs; expenses; disbursements and such other and further relief as the Panel deems just and proper.

American Skandia, Pruco and Prudential Investment requested that the Statement of Claim be dismissed in its entirety; that they be awarded attorneys' fees and that the Panel assess all costs of this proceeding against the Claimant.

Respondent Main Street requested dismissal of the Statement of Claim; that the Panel grant an order recommending expungement of this proceeding and all references to Claimant's complaints from the records maintained by the NASD Central Registration Depository; and that they be awarded costs and fees.

Respondent Flaherty requested dismissal of the Statement of Claim; that the Panel grant an order recommending expungement of this proceeding and all references to Claimant's complaints from the records maintained by the NASD Central Registration Depository and that he be awarded costs and fees.

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

Respondents Wachovia, American Skandia, Pruco and Prudential Equity did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel.

By letter dated November 1, 2004, Claimant notified NASD Dispute Resolution that he settled his claims against Respondents American Skandia, Wachovia, Pruco, Prudential Investment and Prudential Equity.

The parties 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Main Street and Flaherty are jointly and severally liable for and shall pay Claimant compensatory damages in the amount of \$30,902.00 plus 9% interest per annum from November 1, 2001, to December 1, 2005.
2. 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, Respondents American Skandia, Prudential Equity, Pruco, Prudential Investments, Wachovia, and Main Street are parties.

American Skandia, Prudential Equity, Pruco, Prudential Investments, Wachovia:

<u>Member surcharge</u>	= \$	1,700.00
Total Member fees	= \$	1,700.00

Main Street:

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
<u>Hearing process fee</u>	= \$	2,750.00
Total Member fees	= \$	5,200.00

**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:

One (1) Pre-hearing session with Panel @ \$1,125.00 per session	= \$	1,125.00
Pre-hearing conference: March 22, 2005 1 session		
Four (4) Hearing sessions @ \$1,125.00 per session	= \$	4,500.00
Hearing Dates: November 30, 2005 2 sessions		
December 1, 2005 2 sessions		
Total Forum Fees	= \$	5,625.00

The Panel has assessed \$5,625.00 of the forum fees, jointly and severally, against Respondents Main Street and Flaherty.

**Fee Summary**

1. Claimant is solely liable for:		
<u>Initial Filing Fee</u>	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	1,425.00
Refund Due Claimant	= \$	1,125.00
2. Respondent Main Street is solely liable for:		
<u>Member Fees</u>	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00
3. Respondent American Skandia is solely liable for:		
<u>Member fees</u>	= \$	1,700.00
Total Fees	= \$	1,700.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,700.00
4. Respondent Prudential Equity is solely liable for:		
<u>Member fees</u>	= \$	1,700.00
Total Fees	= \$	1,700.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,700.00
5. Respondent Pruco is solely liable for:		
<u>Member fees</u>	= \$	1,700.00
Total Fees	= \$	1,700.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,700.00

6. Respondent Prudential Investment is solely liable for:
- |                                     |               |
|-------------------------------------|---------------|
| <u>Member fees</u>                  | = \$ 1,700.00 |
| <u>Total Fees</u>                   | = \$ 1,700.00 |
| <u>Less payments</u>                | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |
7. Respondent Wachovia is solely liable for:
- |                                     |               |
|-------------------------------------|---------------|
| <u>Member fees</u>                  | = \$ 1,700.00 |
| <u>Total Fees</u>                   | = \$ 1,700.00 |
| <u>Less payments</u>                | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 1,700.00 |
8. Respondents Main Street and Flaherty are jointly and severally liable for:
- |                                     |               |
|-------------------------------------|---------------|
| <u>Forum Fees</u>                   | = \$ 5,625.00 |
| <u>Total Fees</u>                   | = \$ 5,625.00 |
| <u>Less payments</u>                | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 5,625.00 |

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

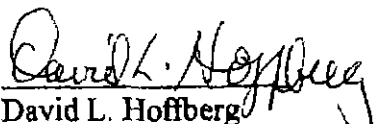
ARBITRATION PANEL

David L. Hoffberg  
Teresa M. Fisher  
Richard A. Scalfani

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- 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.

  
David L. Hoffberg  
Public Arbitrator, Presiding Chairperson

13 Dec 2005  
Signature Date

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Teresa M. Fisher  
Public Arbitrator

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

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Richard A. Scalfani  
Non-Public Arbitrator

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Signature Date

DECEMBER 16, 2005  
Date of Service (For NASD Dispute Resolution use only)

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David L. Hoffberg  
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Signature Date

  
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Teresa M. Fisher  
Public Arbitrator

12-16-05  
Signature Date

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Richard A. Scalfani  
Non-Public Arbitrator

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Signature Date

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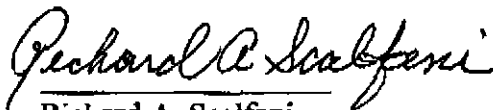
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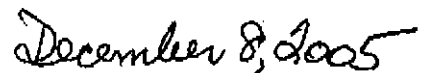
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