

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Darryl R. Settles

and

Case Number: 04-03956  
Hearing Site: Southfield, Michigan

Respondents

Citigroup Global Markets, Inc. f/k/a  
Salomon Smith Barney, Inc.,  
Wachovia Securities, LLC,  
Prudential Equity Group, LLC, and  
David Gallina

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**NATURE OF DISPUTE**

Customer v. Members and Associated Person

**REPRESENTATION OF PARTIES**

Darryl R. Settles ("Claimant") was represented by David A. Monroe, Esq., David A. Monroe, P.L.L.C., Howell, Michigan.

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup") was represented by Lydia R. Zaidman, Esq., Citigroup Global Markets, Inc., New York, New York.

Wachovia Securities, LLC ("Wachovia") was represented by Kevin B. Hurley, Esq., Wachovia Securities, LLC, Richmond, Virginia.

Prudential Equity Group, LLC ("Prudential") and David Gallina ("Gallina") were represented by Daniel M. Hanifin, Esq., and Patrick R. Kingsley, Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 3, 2004. The Submission Agreement of Claimant was signed on or about May 31, 2004.

The Statement of Answer was filed by Citigroup on or about August 23, 2004. The Submission Agreement of Citigroup was signed on or about August 23, 2004, by Alejandro Schwed.

Wachovia responded to the Statement of Claim on or about December 7, 2004.

The Statement of Answer was filed jointly by Prudential Equity Group, LLC (f/k/a Prudential Securities, Inc.) and Gallina on or about August 31, 2004. The Submission Agreement of Prudential Equity Group, LLC was signed on or about November 15, 2004. The Submission Agreement of David Gallina was signed on or about November 11, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, violation of NASD Rules of Fair Practice, churning, breach of contract, negligence/misrepresentation, violation of the Michigan Consumer Protection Act, breach of fiduciary duty, violations of federal and state securities laws, fraud, and common law fraud. The causes of action related to Claimant's allegations that his broker placed Claimant on margin in 1999 and in 2000 without Claimant's knowledge or understanding. Claimant further asserted that his accounts followed his broker to Salomon Smith Barney after the broker left Prudential/Wachovia and that Claimant was still unaware that his account was on margin and that he did not understand the risk of margin.

Unless specifically admitted in its Answer, Citigroup denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant was fully advised of and understood the nature of the investments; and Claimant had full, complete, accurate, and contemporaneous knowledge of the transactions complained of in the Statement of Claim.

Unless specifically admitted in their Answer, Prudential and Gallina denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state claim upon which relief can be granted; Claimant has failed to mitigate his damages; and Claimant's claims are untimely and are barred under the applicable statute of limitations and under the doctrine of laches.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$179,000.00, plus exemplary damages, interest, costs, attorneys' fees, rescission and additional damages as allowed by the panel.

Citigroup requested that the claims asserted against it be denied in their entirety and that it be awarded its costs.

Prudential and Gallina requested that the claims asserted against them be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about October 10, 2005, the parties submitted a Stipulation Substituting Prudential Equity Group LLC f/k/a Prudential Securities, Inc. as Proper Party Respondent in this matter. Claimant had originally named Prudential Securities n/k/a Wachovia Securities in

his Statement of Claim. At the hearing, the parties, clarified that Wachovia Securities (LLC) was no longer a party to the arbitration.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Gallina's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent David Gallina 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, the arbitration panel has made the following affirmative findings of fact:

- a) The claim, allegation, or information is factually impossible or clearly erroneous; and
  - b) The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds, and
- 4.) Any relief not specifically enumerated, including exemplary damages and attorneys' fees, is hereby denied with prejudice.

### **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

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Wachovia Securities, LLC, and Prudential Equity Group, LLC.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

August 16-18, 2005, adjournment requested by Claimant  
with the concurrence of Respondents = \$ 1,125.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing 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:

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: December 7, 2004 1 session

Four (4) Hearing sessions x \$1,125.00 = \$ 4,500.00

Hearing Dates: October 18, 2004 2 sessions

October 19, 2004 2 sessions

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Total Forum Fees = \$ 5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Darryl R. Settles.

The Arbitration Panel has assessed \$2,812.50 of the forum fees jointly and severally to Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Prudential Equity Group, LLC, and David Gallina.

**Fee Summary**

Claimant, Darryl R. Settles, is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 4,237.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 7,887.50
Balance Refunded by NASD Dispute Resolution	= \$ 2,687.50

Respondent, Wachovia Securities, LLC, is liable for:

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

Respondent, Prudential Equity Group, LLC, is liable for:

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

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Prudential Equity Group, LLC, and David Gallina, are jointly and severally liable for:

Forum Fees	= \$ 2,812.50
Total Fees	= \$ 2,812.50
Less payments	= \$ 2,812.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

William P. Thorpe, Esq. - Public Arbitrator, Presiding Chair  
Robert F. Fearon - Public Arbitrator  
James Richter - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ William P. Thorpe, Esq.  
William P. Thorpe, Esq.  
Public Arbitrator, Presiding Chair

10/25/05  
Signature Date

/s/ Robert F. Fearon  
Robert F. Fearon  
Public Arbitrator

10/25/05  
Signature Date

James Richter  
Non-Public Arbitrator

Signature Date

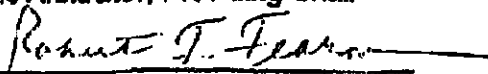
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Date of Service (For NASD office use only)

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Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

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Robert F. Fearon  
Public Arbitrator

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Signature Date

  
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James Richter  
Non-Public Arbitrator

Oct 27, 2005  
Signature Date

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Date of Service (For NASD office use only)