

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

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In the Matter of the Arbitration Between:

Paul Brennan and Paul Brennan IRA (Claimants) v. Mary Ellen Kay and Prudential Securities, Inc., n/k/a Prudential Equity Group (Respondents)

Case Number: 04-04021

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Associated Person and Member.

**REPRESENTATION OF PARTIES**

Claimant Paul Brennan ("P. Brennan") and Paul Brennan IRA ("P. Brennan IRA") hereinafter collectively referred to as "Claimants": Timothy J. Dennin, Esq., Timothy J. Dennin, P.C., Northport, NY.

Respondent Mary Ellen Kay ("Kay"): Michael Kalmus, Esq., Michael Kalmus, P.C., New York, NY. Previously represented by Ricki L. Rhein, Esq., Bressler, Amery & Ross, P.C., New York, NY.

Respondent Prudential Securities, Inc., n/k/a Prudential Equity Group ("Prudential"): Ricki L. Rhein, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 4, 2004.

Claimant P. Brennan signed the Uniform Submission Agreement: February 28, 2004.

Claimant P. Brennan IRA signed the Uniform Submission Agreement: February 28, 2004.

Joint Statement of Answer filed by Respondents Kay and Prudential on or about: September 10, 2004.

Kay signed the Uniform Submission Agreement: July 2, 2004.

Prudential signed the Uniform Submission Agreement: September 13, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence, violation of the antifraud provisions of the 1934 Act, SEC Rule 10b-5, breach of contract, breach of fiduciary duty, and failure to supervise. The causes of action relate to unspecified securities.

Unless specifically admitted in their Answer, Respondents Kay and Prudential denied

the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$138,654.00, punitive damages, attorneys' fees, interest, and costs.

Respondents Kay and Prudential requested dismissal of the Statement of Claim in its entirety and costs.

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

The parties settled the claims in this matter and Respondent Kay requested expungement. On September 29, 2006 the Panel conducted an evidentiary hearing on Respondent Kay's request for expungement; Claimant did not participate at this hearing.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mary Ellen Kay's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Mary Ellen Kay 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.

2. The parties shall bear their respective costs, including attorney's fees, except as fees are specifically addressed below.
3. Any and all reliefs 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(s) at the time of the events giving rise to the dispute. In this matter, the member firm Prudential Securities, Inc., n/k/a Prudential Equity Group is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

September 29-30, 2005 and October 6-7, 2005 adjournment requested by parties	= \$1,125.00
Claimants' share jointly and severally	= \$ 562.50
Respondents Kay and PEG share jointly and severally	= \$ 562.50

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

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 25, 2005 1 session	

One (1) Pre-hearing conference session with the Panel @ \$1,125.00	= \$1,125.00
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Pre-hearing conference: November 18, 2004 1 session

One (1) Hearing session with the Panel @1,125.00	= \$ 1,125.00
Hearing Date: September 29, 2006 1 session	
Total Forum Fees	= \$2,700.00

1. The Panel assessed \$1,350.00 of the forum fees jointly and severally against Claimants.
2. The Panel assessed \$1,350.00 of the forum fees jointly and severally against Respondents Prudential and Kay.

#### **Fee Summary**

1. Claimants are jointly and severally liable for:

Forum Fees	= \$1,350.00
Adjournment Fee	= \$ 562.50
Filing Fee	= \$ 300.00
Total Fees	= \$2,212.50
Less Payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 787.50
2. Respondents Prudential and Kay are jointly and severally liable for:

Adjournment Fee	= \$ 562.50
Forum Fees	= \$1,350.00
Total Fees	= \$1,912.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,912.50
3. Respondent Prudential is solely liable for:

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

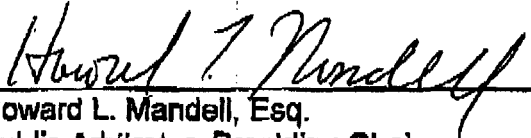
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Howard L. Mandell, Esq.	-	Public Arbitrator, Presiding Chair
David B. Letteney	-	Public Arbitrator
Nathan J. Minucci	-	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 is which is my award.

  
Howard L. Mandell, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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David B. Letteney  
Public Arbitrator

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

\_\_\_\_\_  
Nathan J. Minucci  
Non-Public Arbitrator

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

December 22, 2006  
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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Howard L. Mandell, Esq.	-	Public Arbitrator, Presiding Chair
David B. Letteney	-	Public Arbitrator
Nathan J. Minucci	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Howard L. Mandell, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
David B. Letteney  
Public Arbitrator

22 Nov. 2006  
Signature Date

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Nathan J. Minucci  
Non-Public Arbitrator

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Signature Date

December 22, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Howard L. Mandell, Esq.	-	Public Arbitrator, Presiding Chair
David B. Letteney	-	Public Arbitrator
Nathan J. Minucci	-	Non-Public Arbitrator

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Howard L. Mandell, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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David B. Letteney  
Public Arbitrator

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Signature Date

  
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Nathan J. Minucci  
Non-Public Arbitrator

10/26/06  
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Signature Date

December 22, 2006

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Date of Service (For NASD office use only)