

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Mario Monfardini

and

04-04824
Phoenix, Arizona

Name of Respondents

Prudential Equity Group, LLC
Warren Ronald Thompson
Kathy Ann Stiber

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

REPRESENTATION OF PARTIES

Mario Monfardini ("**Claimant**") was represented by Stuart C. Goldberg, Esq., Scottsdale, Arizona and Seth E. Lipner, Esq., Deutsch & Lipner, Esq., Garden City, New York.

Prudential Equity Group, LLC ("**Respondent PEG**") and Warren Ronald Thompson ("**Respondent Thompson**") hereinafter referred to as ("**Respondents**") were represented by Terry Ross, Esq., Jodi S. Cohen, Esq. and Scott Rahn, Esq., Keesal Young & Logan PC, Long Beach, California.

Kathy Ann Stiber ("**Respondent Stiber**") was represented by Thomas G. Ryan, Esq., Lewis and Roca LLP, Las Vegas, Nevada.

CASE INFORMATION

The Statement of Claim was filed on or about July 8, 2004. Amended Statement of Claim was filed on or about July 19, 2004. Submission Agreement of Claimant Mario Monfardini was signed on July 6, 2004.

Respondents' Answer to Amended Statement of Answer and Motion to Dismiss was filed by Respondents Prudential Equity Group, LLC, Warren Ronald Thompson and Kathy Ann Stiber on or about September 15, 2004. Submission Agreement of Respondent Prudential Equity Group, LLC was signed on August 13, 2004. Submission Agreement of Respondent Warren Ronald Thompson was signed on September 13, 2004. Submission Agreement of Respondent Kathy Ann Stiber was signed on September 13, 2004.

CASE SUMMARY

Claimant alleged as follows:

Respondent-Thompson and Respondent-Stiber are responsible for their own wrongful conduct, and Respondent-Brokerage Firm is responsible for the wrongful conduct of its employees Respondents Thompson and Stiber by the theory of *respondent superior*.

NEGLIGENCE: Respondents' negligent conduct toward Claimant-Monfardini included, but was not limited to:

A)-**UNSUITABLE TRADING:** advising Claimant-Monfardini to engage in unsuitable trading—both as to **choice of securities** and **volume of trading**. Many of the securities were highly volatile and speculative—that being totally unsuitable for a retired man in his mid-eighties during the relevant time period. The volume of trading was excessive by any standard: the annual turnover rate was in excess of 22x, and the Cost/Equity Maintenance Factor was 42%.

B)-**“UNSOLICITED”:** the issuance of monthly brokerage statements and confirmation slips containing the designation of “UNSOLICITED” in two hundred and forty-three (243) instances during the relevant time period, when in fact virtually all transactions were either executed by Respondent-Stiber without even consultation with Claimant-Monfardini or were the result of solicitations. See Schedule#5D [Accounting pages 198>207].

VIOLATION OF NASD RULES OF FAIR PRACTICE: The NASD Rules governing Respondents, specifically demand and require that such financial entity and its associated persons follow certain rules in the conduct of its business. These rules, include but are not limited to the following:

RULE 2110 STANDARDS OF COMMERCIAL HONOR AND PRINCIPLES OF TRADE

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2310 Recommendations to Customers (Suitability)

(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

- (1) the customer's financial status;
- (2) the customer's tax status;
- (3) the customer's investment objectives; and
- (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

BREACH OF CONTRACT: In Respondent-Brokerage Firm's Command Account Client Agreement with Claimant-Monfardini, the Respondent- Brokerge [sic] Firm contractually agreed to be bound by, *inter alia*, all the rules and regulations of the NYSE and NASD as follows:

10. APPLICABLE RULES AND REGULATIONS. The COMMAND Account will be maintained pursuant to all applicable Federal and State laws, including the rules and regulations of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc., as well as to the policies of PSI. All transactions for Client's COMMAND Account will be subject to the constitution, rules, regulations, customs and usages, as the same may be constituted from time to time, of the exchange or market (and its clearing house, if any) where executed. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor a continuing waiver of the provision or provisions so waived.

[Claimant-Monfardini's Command Account Client Agreement,
Claimant-Exhibit-A, ¶15 (emphasis supplied)]

BREACH OF FIDUCIARY DUTY: At all times alleged herein, Respondents were in a fiduciary relationship with Claimant-Monfardini, a relationship defined by the duty of utmost trust and confidence. Respondents thus owed Claimant-Monfardini the highest degree of care in the advice and recommendations it gave to him. Claimant-Monfardini relied upon and placed his trust in Respondents to provide him with professional advice as to how to manage his brokerage account. It is to be emphasized in connection with this allegation of fiduciary duty, that Respondents *actively advised* Claimant-Monfardini regarding both his personal holdings, and as to an ongoing plan to purchase and sell securities. In addition, virtually all of the three-hundred and ninety (390) transactions were either executed by Respondent-Stiber without even consultation with Claimant-Monfardini or were the result of solicitations. See Schedule#4 Securities Transactions [Accounting pages 129>].

FRAUDULENT MISREPRESENTATIONS/OMISSIONS:

A)-**SUITABILITY:** Respondents misrepresented that the securities placed in Claimant-Monfardini's brokerage account were suitable for him.

B)-**VOLUME:** Respondents misrepresented that the volume of securities transactions placed in Claimant-Monfardini's brokerage account were suitable for him.

C)-**"UNSOLICITED"**: Respondents misrepresented that the designation of "UNSOLICITED" in two hundred and forty-three (243) instances were in fact unsolicited, when in fact virtually all transactions were either executed by Respondent-Stiber without even consultation with Claimant-Monfardini or were the result of solicitations.

STATE LAWS:

A)-**ARIZONA**: The prior stated wrongful conduct also constitutes violations of Arizona securities and consumer protection laws—the state in which Claimant-Monfardini resided during the relevant time period. Specifically, the wrongful conduct violated Arizona Securities Statute 44-1991 et seq. Within the breach of contract claim Arizona Statute 12-341.01 also provides for attorney's fees.

B)-**NEW YORK—GBL §-349**: In Respondent-Brokerage Firm's Command Account Client Agreement with Claimant-Monfardini, the Respondent-Brokerage Firm contractually agreed to be bound by New York law as follows:

15. **ARBITRATION/GOVERNING LAW**. ... This Agreement shall be governed by the laws of the State of New York....

[Claimant-Monfardini's Command Account Client Agreement,
Claimant-Exhibit-A, ¶-15 (emphasis supplied)]

Accordingly, the prior stated wrongful conduct also constitutes violations of New York General Business Law §-349.

FAILURE TO SUPERVISE: Respondent-Brokerage Firm through its supervisory personnel failed to supervise the individual respondents in their mismanagement of Claimant-Monfardini's brokerage account. Given the poor CRD records of both individual respondents, extra supervision should have been provided.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

A self-made man, Mr. Monfardini is a sophisticated and knowledgeable investor who has been trading stocks, bonds and options for over thirty years. He is intelligent and has a curious and inquiring nature. He has been an active investor in the securities markets for decades. Over the years, he has diligently investigated the companies in which he has invested. During the time he maintained accounts at PEG, Mr. Monfardini watched his accounts closely, regularly spoke with his brokers and PEG branch managers, and repeatedly

and consistently approved the handling of his accounts, including the activity and use of margin.

Mr. Monfardini has made essentially two claims: 1) unsuitable purchases of speculative securities, and 2) churning (i.e., excessive volume of trading). Based upon these claims, he has asserted causes of action for 1) negligence, 2) violation of NASD rules of fair practice, 3) breach of contract, 4) breach of fiduciary duty, 5) fraudulent misrepresentation/omission, 6) violation of Arizona and New York laws, and 7) failure to supervise. Mr. Monfardini is seeking \$753,703.49 in damages, plus interest, attorneys' fees, costs and punitive damages.

The inescapable conclusion in this case is that Mr. Monfardini knew exactly what was going on in his accounts at all times. He directed and approved all trading activity. His belated attempt to claim that he was a victim of fraud and unauthorized trading should be rejected.

RELIEF REQUESTED

Claimant-Monfardini requested: a)-compensatory damages, including interest at the legal rate up to the filing of his original Statement of Claim on July 7, 2004, in the amount of seven hundred fifty-three thousand seven hundred three dollars and forty-nine cents (\$753,703.49), plus the Monfardini>Stiber loan balance in the amount of thirty-six thousand two hundred dollars (\$36,200). Thus, the total amount of compensatory damages herein demanded is seven hundred and eighty-nine thousand nine hundred and three dollars and forty-nine cents (\$789,903.49); b)-attorneys fees based upon a one-third contingent fee retainer agreement; c)-pre-award interest from July 7, 2004 until payment of any award plus interest on the Monfardini>Stiber loans; d)-the costs of this arbitration; e)-punitive damages in an amount treble that for compensatory damages (\$789,903.49 x3 = \$2,369,710.47); and f)-such other relief as to the arbitrators seems just and proper.

Respondents request that Mr. Monfardini's claims be dismissed in their entirety and that Respondents be awarded their costs and attorneys' fees incurred in defending this frivolous action.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Kathy Ann Stiber filed for bankruptcy on or about June 22, 2005. On June 27, 2005, Claimant moved for the dismissal of Ms. Stiber as a party-respondent without prejudice. In light of the Bankruptcy filing and Claimant's motion, the Panel granted the motion and does not make any adjudication of claims against Ms. Stiber.

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 the NASD Dispute Resolution (the "NASD").

AWARD

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

1. Claimant is awarded a total of \$300,000 from Prudential Equity Group, Inc.
2. Warren Thompson is dismissed as a respondent from these proceedings. The Panel denies Mr. Thompson's request for expungement. While the Panel believes the evidence was insufficient to prove liability, there was sufficient evidence to justify naming Mr. Thompson as a respondent.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is(are) Prudential Equity Group, LLC.

Member surcharge	\$	2,800.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,000.00
Total Member Fees	\$	8,550.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. 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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	March 8, 2005	1	session		
2	Pre-hearing session(s) with Panel	x	1,200.00	\$	2,400.00
	November 22, 2004	1	session		
	January 19, 2005	1	session		
8	Hearing sessions	x	1,200.00	\$	9,600.00
	July 25, 2005	2	sessions		
	July 26, 2005	2	sessions		
	July 27, 2005	2	sessions		
	July 28, 2005	1	session		
	July 29, 2005	1	session		
	Total Forum Fees			\$	12,450.00

The Arbitration Panel has assessed \$6,225.00 of the forum fees to Mario Monfardini.

The Arbitration Panel has assessed \$6,225.00 of the forum fees to Prudential Equity Group, LLC.

Fee Summary

Claimant, Mario Monfardini, shall be and hereby is liable for:

Initial Filing Fee	= \$	600.00
<u>Forum Fees</u>	= \$	6,225.00
Total Fees	= \$	6,825.00
<u>Less payments</u>	= \$	-1,800.00
Balance Due NASD Dispute Resolution	= \$	5,025.00

Respondent, Prudential Equity Group, LLC, shall be and hereby is liable for:

Member Fees	= \$	8,550.00
<u>Forum Fees</u>	= \$	6,225.00
Total Fees	= \$	14,775.00
<u>Less payments</u>	= \$	-8,550.00
Balance Due NASD Dispute Resolution	= \$	6,225.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Frank R. Mead, Jr., Esq. - Public Arbitrator, Presiding Chair

Patricia G. Parthe, Esq. - Public Arbitrator

Dan B. Williams - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frank R. Mead, Jr.

Frank R. Mead, Jr., Esq.

Public Arbitrator, Presiding Chair

August 9, 2005

Signature Date

/s/ Patricia G. Parthe

Patricia G. Parthe, Esq.

Public Arbitrator

August 8, 2005

Signature Date

Arbitrator Williams concurs in the finding of liability for Prudential Equity Group, Inc., but dissents from dismissing Mr. Thompson. Arbitrator Williams believes that Mr. Thompson, as the senior member of the broker partnership overseeing claimant's account, bears some responsibility for claimant's losses but there is no way to determine his responsibility fairly.

/s/ Dan B. Williams

Dan B. Williams

Non-Public Arbitrator

August 9, 2005

Signature Date

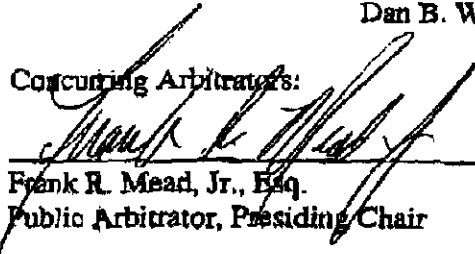
Date of Service (For NASD office use only)

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ARBITRATION PANEL

Frank R. Mead, Jr., Esq. - Public Arbitrator, Presiding Chair
Patricia G. Parthe, Esq. - Public Arbitrator
Dan B. Williams - Non-Public Arbitrator

Concurring Arbitrators:


Frank R. Mead, Jr., Esq.
Public Arbitrator, Presiding Chair

August 9, 2005
Signature Date

Patricia G. Parthe, Esq.
Public Arbitrator

Signature Date

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Dan B. Williams
Non-Public Arbitrator

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Arbitration No. 04-04824
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ARBITRATION PANEL

Frank R. Mead, Jr., Esq. - Public Arbitrator, Presiding Chair
Patricia G. Parthe, Esq. - Public Arbitrator
Dan B. Williams - Non-Public Arbitrator

Concurring Arbitrators:

Frank R. Mead, Jr., Esq.
Public Arbitrator, Presiding Chair

Patricia G. Parthe

Patricia G. Parthe, Esq.
Public Arbitrator

Signature Date

8/8/05
Signature Date

Arbitrator Williams concurs in the finding of liability for Prudential Equity Group, Inc., but dissents from dismissing Mr. Thompson. Arbitrator Williams believes that Mr. Thompson, as the senior member of the broker partnership overseeing claimant's account, bears some responsibility for claimant's losses but there is no way to determine his responsibility fairly.

Dan B. Williams
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Frank R. Mead, Jr., Esq. - Public Arbitrator, Presiding Chair
Patricia G. Parthe, Esq. - Public Arbitrator
Dan B. Williams - Non-Public Arbitrator

Concurring Arbitrators:

Frank R. Mead, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Patricia G. Parthe, Esq.
Public Arbitrator

Signature Date

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Dan B. Williams
Non-Public Arbitrator

8-9-05
Signature Date

Date of Service (For NASD office use only)