

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

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**In the Matter of the Arbitration Between:**

James S. Dickerson, on behalf of himself, his Individual Retirement Account and as Trustee for the Dickerson Family Trust and Mary Dickerson, on behalf of herself, her Individual Retirement Account and as Trustee for the Dickerson Family Trust, Claimants v. Prudential Equities Group, LLC f/k/a Prudential Securities Incorporated, A.G. Edwards & Sons, Inc., David Harrison Rascoe, and Shoshana Lev-Bar, Respondents

Case Number: 04-05884

Hearing Site: San Diego, California

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Nature of the Dispute: Customers v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Leslie S. Akins, Esq.  
Dennis Villavicencio, Esq.  
Akins & Villavicencio, LLP  
Carlsbad, California

For Respondents Prudential Equities Group, LLC  
f/k/a Prudential Securities Incorporated ("Prudential  
Equities Group, LLC") and David Harrison Rascoe:

Charles B. LaChaussee, Esq.  
Prudential Equity Group, LLC  
San Francisco, California

For Respondents A.G. Edwards & Sons, Inc.  
and Shoshana Lev-Bar:

Joseph E. Floren, Esq.  
Morgan, Lewis & Bockius LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: on or about August 20, 2004

Claimants' Joint Uniform Submission Agreement signed: August 15, 2004

Statement of Answer filed by Respondent Prudential Equities Group, LLC: January 18, 2005

Joint Statement of Answer filed by Respondents A.G. Edwards & Sons, Inc. and Shoshana Lev-Bar: October 29, 2004

Respondent Prudential Equities Group, LLC's Uniform Submission Agreement signed: January 26, 2005

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed: October 28, 2004

Respondent Shoshana Lev-Bar's Uniform Submission Agreement signed: October 28, 2004

### **CASE SUMMARY**

Claimants alleged unsuitable investments, negligence, misrepresentations and omissions, violations of the NASD Conduct Rules and NYSE Rules, violation of the California Corporations Code Section 25401 and 25501 and California Code of Regulations 260.216.4, 260.218.1, 260.218.2, 260.218.4(a), and 260.218.6, breach of contract, constructive fraud, breach of fiduciary duty, negligent supervision, and respondeat superior. The dispute involved the purchase and/or sale of various mutual funds and technology stocks.

Unless specifically admitted in its Answers, Respondents Prudential Equities Group, LLC, A.G. Edwards & Sons, Inc., and Shoshana Lev-Bar denied the allegations made in the Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages, disgorgement of commissions, charges, and fees charged by Respondents, unspecified punitive damages, pre-judgment and post-judgment interest, and costs, including attorney's fees.

Respondent Prudential Equities Group, LLC requested dismissal of the Claimants' Statement of Claim in its entirety, costs, and that all reference to this matter be expunged from its Central Registration Depository ("CRD") records.

Respondents A.G. Edwards & Sons, Inc. and Shoshana Lev-Bar requested dismissal of the Claimants' Statement of Claim in its entirety, costs, and expungement of this matter from Respondent Shoshana Lev-Bar's CRD record.

Respondent David Harrison Rascoe did not file a Statement of Answer to Claimants' Statement of Claim.

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

Respondent David Harrison Rascoe did not file with NASD Dispute Resolution a properly executed submission agreement, but is required to submit to arbitration pursuant to the Code, and is bound by the determination of the Panel on all issues submitted

On September 24, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 29, 2004, Respondents A.G. Edwards & Sons, Inc. and Shoshana Lev-Bar's counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 8, 2004, NASD Dispute Resolution received a Stipulation from Claimants and Respondents Prudential Equities Group, LLC and David Harrison Rascoe, which among other things, dismissed Respondent David Harrison Rascoe without prejudice.

On November 14, 2005, Respondents A.G. Edwards & Sons, Inc. and Shoshana Lev-Bar filed a Motion for Leave to Amend Answer to Statement of Claim to Correct an Administrative Oversight. On December 1, 2005, Claimants filed a Response to Respondents' Motion for Leave to Amend Answer. On January 6, 2006, the Panel held a pre-hearing conference with the parties to hear oral argument on Respondents' motion. After due deliberation, the Panel permitted Respondents A.G. Edwards & Sons, Inc. and Shoshana Lev-Bar to amend their Statement of Answer to include a statute of limitations defense.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay the Mary Dickerson Individual Retirement Account the sum of \$34,425.00 in compensatory damages.
- 2) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay the Mary Dickerson Individual Retirement Account interest on \$34,425.00 at the rate of 4% per annum from June 1, 2004 until the date that this Award is paid in full.
- 3) Respondent Shoshana Lev-Bar is liable to and shall pay the Mary Dickerson Individual Retirement Account the sum of \$3,825.00 in compensatory damages.
- 4) Respondent Shoshana Lev-Bar is liable to and shall pay the Mary Dickerson Individual Retirement Account interest on \$3,825.00 at the rate of 4% per annum from June 1, 2004 until the date that this Award is paid in full.
- 5) The claims of Claimant James S. Dickerson, on behalf of himself, his Individual Retirement Account, and as Trustee for the Dickerson Family Trust are denied in their entirety.
- 6) Respondent Prudential Equities Group, LLC is dismissed with prejudice.
- 7) The parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied, including Claimants' request for punitive damages.

### **FEES**

Pursuant to the *NASD Code of Arbitration Procedure* ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy.

The member firm Prudential Equities Group, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

The member firm A.G. Edwards & Sons, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, 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 conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: December 7, 2005 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$ 2,000.00  
Pre-hearing conferences: April 13, 2005 1 session  
January 6, 2006 1 session

Nine (9) Hearing sessions @ \$1,000.00/session = \$ 9,000.00  
Hearings: January 9, 2006 2 sessions  
January 10, 2006 2 sessions  
January 11, 2006 2 sessions  
January 12, 2006 1 session  
January 13, 2006 2 sessions

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**Total Forum Fees** = **\$11,450.00**

1. The Panel assessed \$5,725.00 of the forum fees to Claimant James S. Dickerson.
2. The Panel assessed \$5,725.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	= \$( 250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
2. Claimant James S. Dickerson is charged with the following fees and costs:

Forum Fees	= \$ 5,725.00
<u>Less payments</u>	= \$( 1,175.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,550.00</b>
  
3. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 5,725.00
Total Fees	= \$10,175.00
<u>Less payments</u>	= \$( 4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,725.00</b>
  
4. Respondent Prudential Equities Group, LLC is charged with the following fees and costs:


Member Fees	= \$ 4,450.00
<u>Less payments</u>	= \$( 4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

Erwin Jay Shustak	-	Public Arbitrator, Presiding Chair
Deanna Margaret Veitia	-	Public Arbitrator
Lauren Litman	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Deanna Margaret Veitia  
Public Arbitrator

1/28/06  
Signature Date

\_\_\_\_\_  
Lauren Litman  
Non-Public Arbitrator

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

**Concurring in Part, Dissenting in Part Arbitrator's Signature**

This Arbitrator dissents from the dismissal of the claims of Claimant James S. Dickerson, on behalf of himself, his Individual Retirement Account, and as Trustee for the Dickerson Family Trust.

\_\_\_\_\_  
Erwin Jay Shustak  
Chair, Public Arbitrator

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

1/30/06  
Date of Service

**ARBITRATION PANEL**

Erwin Jay Shustak	-	Public Arbitrator, Presiding Chair
Deanna Margaret Veitia	-	Public Arbitrator
Lauren Litman	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Deanna Margaret Veitia  
Public Arbitrator

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

Lauren Litman  
Lauren Litman  
Non-Public Arbitrator

1/30/06  
Signature Date

**Concurring in Part, Dissenting in Part Arbitrator's Signature**

This Arbitrator dissents from the dismissal of the claims of Claimant James S. Dickerson, on behalf of himself, his Individual Retirement Account, and as Trustee for the Dickerson Family Trust.

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Erwin Jay Shustak  
Chair, Public Arbitrator

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Signature Date

1/30/06  
Date of Service



**ARBITRATION PANEL**

Erwin Jay Shustak	-	Public Arbitrator, Presiding Chair
Deanna Margaret Veitia	-	Public Arbitrator
Lauren Litman	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Deanna Margaret Veitia  
Public Arbitrator

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

\_\_\_\_\_  
Lauren Litman  
Non-Public Arbitrator

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

**Concurring in Part, Dissenting in Part Arbitrator's Signature**

This Arbitrator dissents from the dismissal of the claims of Claimant James S. Dickerson, on behalf of himself, his Individual Retirement Account, and as Trustee for the Dickerson Family Trust.

  
\_\_\_\_\_  
Erwin Jay Shustak  
Chair, Public Arbitrator

1-26-06  
\_\_\_\_\_  
Signature Date

1/30/06  
\_\_\_\_\_  
Date of Service