

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

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In the Matter of the Arbitration Between:

Magda Herzog (Claimant) vs. Peter Bisgeier, Prudential Securities Inc., n/k/a Prudential Equity Group, LLC, Prudential Financial and Wachovia Securities, LLC (Respondents)

Case Number: 04-06571

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Magda Herzog ("Herzog") hereinafter referred to as "Claimant": Brian H Reis, Esq., New York, NY.

Respondents Peter Bisgeier ("Bisgeier"), Prudential Securities Inc., n/k/a Prudential Equity Group, LLC ("Prudential"), Prudential Financial ("Prudential Financial") hereinafter collectively referred to as "Respondents": David M. Schlecker, Esq., Anderson Kill & Olick, P.C., New York, NY.

Respondent Wachovia Securities, LLC ("Wachovia"): Kevin B. Hurley, Esq., Wachovia Securities, LLC, Richmond, VA.

**CASE INFORMATION**

Statement of Claim filed on or about: August 13, 2004.

Claimant signed the Uniform Submission Agreement: June 2, 2004.

Statement of Answer filed by Respondents Prudential and Bisgeier on or about: April 14, 2005.

Respondent Prudential signed the Uniform Submission Agreement: February 16, 2005.

Respondent Bisgeier signed the Uniform Submission Agreement: April 1, 2005.

Statement of Answer filed by Respondent Wachovia on or about: May 10, 2005.

Respondent Wachovia did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability, misrepresentation, breach of fiduciary duty, respondent superior and failure to supervise. The causes of action related to the sale of convertible notes of companies including System Software Association and Phycor, Inc.

Unless specifically admitted in their Answer, Respondents Prudential and Bisgeier denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$50,000.00, punitive damages, forum fees and attorneys' fees.

Respondents Prudential and Bisgeier requested that the Statement of Claim be dismissed, costs be assessed against the Claimant and for such other and further relief as the Panel may deem just and proper.

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

Respondent Wachovia did not file with NASD Dispute Resolution a properly executed Uniform 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.

By letter dated April 4, 2005, the parties agreed that Claimant would withdraw her claims against Prudential Financial.

By letter dated June 29, 2005, Claimant withdrew her claims against Wachovia.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice.
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 = Waived

#### **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. Accordingly, Prudential Securities, Inc. and Wachovia Securities, LLC are parties.

#### **Prudential Securities, Inc.**

Member surcharge

= \$ 875.00

Pre-hearing process fee

= \$ 750.00

Hearing process fee = \$1,000.00

Wachovia Securities, LLC

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

**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) Decision on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$ 200.00

Respondent submitted (one) discovery-related motion

One (1) Pre-hearing session with Panel @ \$600.00 = \$ 600.00

Pre-hearing conference: October 5, 2005 1 session

Total Forum Fees = \$ 800.00

1. The Panel has assessed \$800.00 of the forum fees to Claimant. The Panel determined to waive the forum fees assessed to Claimant.

**Fee Summary**

1. Respondent Prudential is solely liable for:

Member Fees = \$2,625.00

Total Fees = \$2,625.00

Less payments = \$2,625.00

Balance Due NASD Dispute Resolution = \$ 0.00

2. Respondent Wachovia is solely liable for:

Member Fees = \$1,625.00

Total Fees = \$1,625.00

Less payments = \$1,625.00

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**

Karen Isabel Bedrosian-Richardson	-	Public Arbitrator, Presiding Chairperson
Peter A. Kiefer	-	Public Arbitrator
Eugene D. Brody	-	Non-Public Arbitrator

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, which is my award.

**Concurring Arbitrators' Signatures**

  
Karen Isabel Bedrosian-Richardson  
Public Arbitrator, Presiding Chairperson

04/14/2006  
Signature Date

\_\_\_\_\_  
Peter A. Kiefer  
Public Arbitrator

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

\_\_\_\_\_  
Eugene D. Brody  
Non-Public Arbitrator

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

April 17, 2006  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

  
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Public Arbitrator

4/17/06  
Signature Date

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