

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barry Brown, Claimant v. Prudential Equity Group, LLC and Stephen B. Turner, Respondents

Case Number: 04-06743

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Jules L. Federman
Personal Representative
Santa Barbara, California

For Respondents:

Jeffrey E. Glen, Esq.
Anderson, Kill & Olick, P.C.
New York, New York

CASE INFORMATION

Statement of Claim filed: September 21, 2004

Claimant's Uniform Submission Agreement signed: December 13, 2004

Joint Statement of Answer filed by Respondents: March 18, 2005

Respondent Prudential Equity Group, LLC's Uniform Submission Agreement signed:
January 11, 2005

Respondent Stephen B. Turner's Uniform Submission Agreement signed: December 7, 2005

CASE SUMMARY

Claimant alleged breach of fiduciary duty and violation of NASD and NYSE rules. Claimant's allegations involved transactions in his Prudential Advisor Program account and relate to transactions in unspecified stocks and mutual funds described as "high priced and speculative, the largest majority in which Prudential made a market."

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$200,000.00 in compensatory damages and interest.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On September 8, 2004, Claimant and Claimant's Representative 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. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant 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 October 24, 2005, Respondents moved the Panel to Compel responses to Respondents' Document and Information Requests of May 3, 2005 and to impose sanctions for Claimant's failure to respond. Claimant did not file a response to this motion. On September 13, 2005, a telephonic pre-hearing conference was held, attended by Jules Federman, representative for Claimant Barry Brown, Jeffrey E. Glen, Esq., Counsel for Respondents, and the Chair. After due deliberation the Chair granted the motion and imposed sanctions on Claimant of \$1,665.69, the amount spent by Respondents in attorney's fees and costs in connection with the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

The Panel finds for the Respondents. The contract between the Claimant and Respondents clearly states, "In this program, discretion for selecting investments and for executing securities transactions remains solely with the client." Evidence presented at the hearing indicated that Claimant had at least a functioning understanding of securities trading and some history of performing independent research and making his own recommendations; and that Claimant understood there were risks in investing.

Claimant failed to prove that Respondents provided Claimant with (or that Claimant relied on), any opinion that was negligently reasoned notwithstanding the fact that Respondents may or may

not have utilized every available resource in forming said opinion. Nor did Claimant prove that Respondents negligently withheld information from Claimant that would have altered Claimant's investment strategy.

Claimant additionally failed to prove that Respondents acted on their own behalf and for their own benefit or exercised effective control over Claimant's accounts, or that Respondents took advantage of the trust and confidence reposed in them by Claimant.

Further, Claimant's actions over a prolonged period of time expressly and impliedly ratified the transactions and positions of his account. The purpose of the Securities Act is to protect the innocent investor, not one who waits to see how his investments turn out before deciding to invoke the provisions of the Act. The evidence presented showed that the Claimant was regularly apprised and aware of his account status over a prolonged period of time. Having failed to protest within a reasonable amount of time, Claimant is estopped from later raising any claims of malfeasance. To hold otherwise would dangerously open the door to any investor who suffered loss from a failed strategy based on reasoned opinion.

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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the 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 = \$ 300.00

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. Accordingly, the member firm Prudential Equity Group, LLC is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 13, 2005	1 session
One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: June 1, 2005	1 session
Six (6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: December 6, 2005	2 sessions
December 7, 2005	2 sessions
December 8, 2005	2 sessions
Total Forum Fees	= \$8,325.00

1. The Panel assessed \$2,775.00 of the forum fees to Claimant.
2. The Panel assessed \$2,775.00 of the forum fees to Respondent Prudential Equity Group, LLC.
3. The Panel assessed \$2,775.00 of the forum fees to Respondent Stephen B. Turner.

Fee Summary

1. Claimant Barry Brown is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,775.00
Total Fees	= \$ 3,075.00
<u>Less payments</u>	= \$(1,475.00)
Balance Due NASD Dispute Resolution	= \$ 1,600.00

2. Respondent Prudential Equity Group, LLC is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 2,775.00
Total Fees	= \$ 7,975.00
<u>Less payments</u>	= \$(5,950.00)
Balance Due NASD Dispute Resolution	= \$ 2,025.00

3. Respondent Stephen B. Turner is charged with the following fees and costs:


<u>Forum Fees</u>	= \$ 2,775.00
Balance Due NASD Dispute Resolution	= \$ 2,775.00

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

<i>Dennis A. Torres</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Steven A. Wawra, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard William DeWeese, Jr.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Dennis A. Torres
Chair, Public Arbitrator

14 December 2005
Signature Date

Steven A. Wawra, Esq.
Public Arbitrator

Signature Date

Richard William DeWeese, Jr.
Non-Public Arbitrator

Signature Date

December 14, 2005
Date of Service

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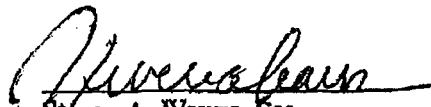
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<i>Steven A. Wawra, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard William DeWeese, Jr.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Dennis A. Torres
Chair, Public Arbitrator

Signature Date


Steven A. Wawra, Esq.
Public Arbitrator

12-14-05
Signature Date

Richard William DeWeese, Jr.
Non-Public Arbitrator

Signature Date

December 14, 2005
Date of Service

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<i>Richard William DeWeese, Jr.</i>	-	<i>Non-Public Arbitrator</i>

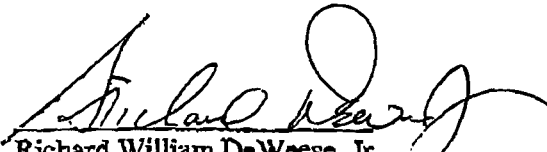
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Dennis A. Torres
Chair, Public Arbitrator

Signature Date

Steven A. Wawra, Esq.
Public Arbitrator

Signature Date



Richard William DeWeese, Jr.
Non-Public Arbitrator

12/13/2005

Signature Date

December 14, 2005

Date of Service