

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

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In the Matter of the Arbitration Between:

Polly S. Gibson (Claimant) v. Pruco Securities, LLC and Jodd L. Frey (Respondents)

Case Number: 04-07320

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimant Polly S. Gibson ("Gibson") hereinafter referred to as "Claimant": William D. Robitzek, Esq., Berman & Simmons, P.A., Lewiston, ME.

Respondent Pruco Securities, LLC ("Pruco"): Fred N. Knopf, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, NY.

Respondent Jodd L. Frey ("Frey"): Paul W. Chaiken, Esq., Rudman & Winchell, LLC, Bangor, ME.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: January 31, 2005.

Statement of Answer filed by Respondent Pruco on or about: January 21, 2005.

Respondent Pruco did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Frey on or about: January 26, 2005.

Respondent Frey signed the Uniform Submission Agreement: February 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; breach of fiduciary duty; vicarious liability; and negligent training and supervision. The causes of action relate to a variable annuity.

Unless specifically admitted in its Answer, Respondent Pruco denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Frey denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$300,000.00.

Respondent Pruco requested that Claimant's claims be dismissed in their entirety; attorneys' fees and costs; and that all costs of this proceeding be assessed against Claimant.

Respondent Frey requested Claimant's claims be dismissed in their entirety; attorneys' fees and costs; and that all costs of this proceeding be assessed against Claimant.

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

Respondent Pruco 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, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about April 6, 2005, Claimant made a motion to dismiss pursuant to Code of Arbitration Procedure Rule 10305(a) on the grounds that it is no longer subject to arbitration under Maine law. On or about April 26, 2005, Respondent Pruco filed its response to the motion and on or about May 3, 2005, Claimant submitted a reply to Respondent Pruco's response. After due consideration, the Panel granted the motion to dismiss without prejudice.

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, and the motion to dismiss and all responses, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein 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

#### **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 at the time of the events giving rise to the dispute. Accordingly, Pruco Securities, LLC is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: April 7, 2005 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$375.00 of the forum fees against Claimant.
2. The Panel has assessed \$375.00 of the forum fees against Respondent Pruco.
3. The Panel has assessed \$375.00 of the forum fees against Respondent Frey.

#### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 750.00

2. Respondent Pruco is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 375.00
Total Fees	= \$5,575.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,575.00

3. Respondent Frey is solely liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

**ARBITRATION PANEL**

Brian J. Dunn, Esq.	-	Public Arbitrator, Presiding Chairperson
Albert J. Cirone, Jr., Esq.	-	Public Arbitrator
Geraldine B. Cunningham	-	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 which is my award.



Brian J. Dunn, Esq.  
Public Arbitrator, Presiding Chairperson

5/26/05  
Signature Date

Albert J. Cirone, Jr., Esq.  
Public Arbitrator

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

Geraldine B. Cunningham  
Non-Public Arbitrator

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Signature Date

June 1, 2005

Date of Service (For NASD Dispute Resolution use only)

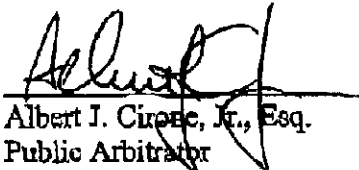
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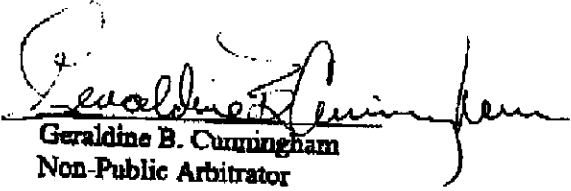
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