

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

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In the Matter of the Arbitration Between:

Andrew Andrews (Claimant) vs. Prudential Securities, Inc. n/k/a Wachovia Securities, Prudential Securities, Inc. n/k/a Prudential Equity Group LLC and Abram Gorsuch (Respondents)

Case Number: 04-08797

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Andrew Andrews hereinafter referred to as "Claimant": Fred Van Remortel, Esq., The Law Offices of Fred Van Remortel, P.C., New York, NY.

Respondent Prudential Securities, Inc. n/k/a Wachovia Securities ("Wachovia"): Kevin B. Hurley, Esq., Chief Litigation Counsel Wachovia Securities, Richmond, VA.

Respondents Prudential Securities, Inc. n/k/a Prudential Equity Group LLC ("Prudential") and Abram Gorsuch ("Gorsuch"), hereinafter collectively referred to as "Respondents": Celia L. Passaro, Esq., Proskauer Rose LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 29, 2004.

Amended Statement of Claim filed on or about: March 1, 2005.

Claimant signed the Uniform Submission Agreement: March 15, 2005.

Wachovia filed a Statement of Answer on or about: February 17, 2005.

Wachovia did not submit a signed Uniform Submission Agreement.

Joint Statement of Answer to Amended Statement of Claim filed by Respondents on or about: April 4, 2005.

Prudential signed the Uniform Submission Agreement: July 8, 2005.

Gorsuch signed the Uniform Submission Agreement: March 21, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise, suitability, negligence, securities fraud, breach of contract, and breach of fiduciary duty. The causes of action relate to trading on margin of various speculative, high-risk technology, and biotech stocks.

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

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$550,000.00, pre and post judgment interest, costs, expenses of expert witness, reasonable attorneys' fees, punitive damages in the amount of \$300,000.00, and such relief as the Panel deems appropriate.

Wachovia requested that Claimant voluntarily dismiss them from the arbitration and that Claimant further direct NASD Dispute Resolution to cancel the invoice issued to them, and reserved the right to seek to recover all costs and expenses, including legal fees incurred by seeking to dismiss this arbitration or enjoin Claimant from continuing to prosecute against them.

Respondents requested that that Statement of Claim be dismissed in its entirety, award costs and expenses of this arbitration, expungement of Respondent Gorsuch's CRD record, and award such other and further relief as is just and proper.

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

On or about March 1, 2005, Claimant dismissed without prejudice, all claims against Wachovia who was named as a party in error. Claimant amended his claim naming Prudential Equity Group LLC.

At the hearing the parties fully and finally settled all claims between them. Respondent Gorsuch reiterated his request for expungement of his CRD record. The Panel heard oral arguments on the issue and determined to grant the request.

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

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Abram Gorsuch's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Abram Gorsuch must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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 = \$ 375.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Prudential Securities, Inc. is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 12-14, 2005, adjournment by Claimant	Waived
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#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

December 12-14, 2005 adjournment by Claimant	= \$ 300.00
Claimant's share	= \$ 150.00
Respondents' share	= \$ 150.00

#### **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) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: October 18, 2005 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: July 11, 2005 1 session	
Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00

Hearing Dates:	November 1, 2005	2 sessions
	November 2, 2005	2 sessions
	February 9, 2006	2 sessions

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Total Forum Fees	= \$ 8,850.00
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1. The Panel has assessed \$4,425.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,425.00 of the forum fees to Prudential.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|-------------|
| 1. Claimant requested copies of hearing tapes.    | = \$ 120.00 |
| 2. Respondents requested copies of hearing tapes. | = \$ 120.00 |

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 4,425.00
<u>Administrative Costs</u>	= \$ 120.00
Total Fees	= \$ 5,070.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,495.00
2. Prudential is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 4,425.00
Total Fees	= \$ 11,425.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00
3. Respondents are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Administrative Costs</u>	= \$ 120.00
Total Fees	= \$ 270.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 270.00

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

**ARBITRATION PANEL**

Howard L. Sobel	-	Public Arbitrator, Presiding Chairperson
Carolyn J. Mastropieri	-	Public Arbitrator
Arthur P. Fisch, Esq.	-	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, which is my award.



Howard L. Sobel  
Public Arbitrator, Presiding Chairperson

2/21/06  
Signature Date

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Carolyn J. Mastropieri  
Public Arbitrator

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

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Arthur P. Fisch, Esq.  
Non-Public Arbitrator

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Signature Date

**February 28, 2006**

**Date of Service (For NASD Dispute Resolution use only)**

ARBITRATION PANEL


Howard L. Sobel	-	Public Arbitrator, Presiding Chairperson
Carolyn J. Mastropieri	-	Public Arbitrator
Arthur P. Fisch, Esq.	-	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, which is my award.

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Howard L. Sobel  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Carolyn J. Mastropieri  
Public Arbitrator

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

\_\_\_\_\_  
Arthur P. Fisch, Esq.  
Non-Public Arbitrator

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

**February 28, 2006**

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Date of Service (For NASD Dispute Resolution use only)