

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James David Cooke, Claimant v. Prudential Equity Group, LLC and David D. Semersky,
Respondents

Case Number: 05-00602

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Paul W. Thomas, Esq.
Thomas & Associates
Carlsbad, California

For Respondents:

Steven M. Malina, Esq.
Jonathan DeGooyer, Esq.
Morgan, Lewis & Bockius LLP
San Francisco, California

CASE INFORMATION

Statement of Claim received: February 3, 2005

Amendment to Statement of Claim filed: December 20, 2005

Claimant's Uniform Submission Agreement signed: January 28, 2005

Statement of Answer filed by Respondents: April 28, 2005

Respondent Prudential Equity Group, LLC's Uniform Submission Agreement signed: March 7, 2005

Respondent David D. Semersky's Uniform Submission Agreement signed: April 27, 2005

CASE SUMMARY

In the Statements of Claim, Claimant alleged breach of contract, professional negligence, and fraudulent misrepresentation, involving unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statements of Claim, Claimant requested \$332,146.00 in compensatory damages, \$132,858.00 in interest, \$664,292.00 in exemplary damages, and costs, including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On December 20, 2005, Claimant filed a Motion for Leave to Amend the Statement of Claim pursuant to the NASD *Code of Arbitration Procedure* Rule 10328(b). On January 26, 2006, the Panel granted Claimant's Motion for Leave to Amend the Statement of Claim.

On May 6, 2005, Claimant and Claimant's 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.

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 March 6, 2006, Respondents filed a Motion to Strike Claimant's Supplemental Expert Reports and Motion for Sanctions. On March 13, 2006, Respondents filed a Second Motion to Strike Claimant's Supplemental Expert Reports and Motion for Sanctions. On March 14, 2006, Respondents filed an addendum to the Second Motion to Strike Claimant's Supplemental Expert Reports and Motion for Sanctions. On March 9, 2006, the Panel ruled that the motions would be heard and decided at the evidentiary hearing. At the evidentiary hearing, the Panel ruled that

Claimant's supplemental expert reports would be excluded.

On March 21, 2006, Respondents filed a request to strike the declaration of Claimant's expert witness. On March 21, 2006, Claimant filed a response to Respondents' request. After due deliberation, the Panel granted Respondents' request to strike the declaration.

At the evidentiary hearing, Respondents verbally requested that the Panel grant expungement of Respondent David D. Semersky's registration records maintained by the NASD Central Registration Depository ("CRD").

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, evidence presented at the hearing, and the post-hearing submissions, 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) Respondents' request for expungement of Respondent David D. Semersky's CRD record is denied.
- 3) All requests for sanctions are denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 375.00
--------------------------	-------------

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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

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/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: February 27, 2006 1 session

6 Hearing sessions @ \$1,200.00/session = \$ 7,200.00
Hearings: March 15, 2006 2 sessions
March 16, 2006 2 sessions
March 17, 2006 2 sessions

Total Forum Fees	= \$ 7,650.00
-------------------------	----------------------

The Panel assessed \$7,650.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 60 photocopies at \$0.50 each: =\$ 30.00

Fee Summary

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

Initial Filing Fee	= \$ 375.00
<u>Administrative Costs</u>	= \$ 30.00
Total Fees	= \$ 405.00
<u>Less payments</u>	= \$(1,575.00)
Refund Due Claimant	= \$(1,170.00)

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

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:


Forum Fees	= \$ 7,650.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 7,650.00

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

A. Joel Klein	-	Public Arbitrator, Presiding Chair
Robert B. Moran	-	Public Arbitrator
Thomas J. Doherty	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


A. Joel Klein
Chair, Public Arbitrator

3/29/06
Signature Date

Robert B. Moran
Public Arbitrator

Signature Date

Thomas J. Doherty
Non-Public Arbitrator

Signature Date

3/29/06
Date of Service

ARBITRATION PANEL

A. Joel Klein	-	Public Arbitrator, Presiding Chair
Robert B. Moran	-	Public Arbitrator
Thomas J. Doherty	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

A. Joel Klein
Chair, Public Arbitrator

Signature Date



Robert B. Moran
Public Arbitrator

3-29-06
Signature Date

Thomas J. Doherty
Non-Public Arbitrator

Signature Date

3/29/06
Date of Service

ARBITRATION PANEL

A. Joel Klein	-	Public Arbitrator, Presiding Chair
Robert B. Moran	-	Public Arbitrator
Thomas J. Doherty	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

A. Joel Klein
Chair, Public Arbitrator

Signature Date

Robert B. Moran
Public Arbitrator

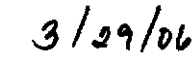
Signature Date



Thomas J. Doherty
Non-Public Arbitrator



Signature Date



Date of Service