

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Robert J. Robinson, Sr.

and

Case Number: 05-00801  
Hearing Site: Detroit, Michigan

Respondents

Pruco Securities, LLC, Prudential  
Insurance Company of America and  
Thomas L. Boyd

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**NATURE OF DISPUTE**

Customer v. Members and Associated Person

**REPRESENTATION OF PARTIES**

Robert J. Robinson, Sr. ("Claimant") appeared pro se. Claimant was represented by David M. Black, Esq., Sommers, Schwartz, Silver & Schwartz, P.C., Southfield, Michigan, until on or about September 26, 2005.

Respondents, Pruco Securities, LLC ("Pruco") and Prudential Insurance Company of America ("Prudential"), were represented by Emily A. Hayes, Esq., Wilson, Elder Moskowitz, Edelman & Dicker, LLP, White Plains, New York.

Respondent, Thomas L. Boyd ("Boyd"), was represented by Brian Witus, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 14, 2005. The Submission Agreement of Robert J. Robinson, Sr., was signed on or about December 23, 2004.

The Motion to Dismiss and Statement of Answer was filed jointly by Pruco and Prudential on or about June 14, 2005.

The Motion to Dismiss and Statement of Answer was filed by Boyd on or about April 5, 2006. The Submission Agreement of Boyd was signed on or about February 27, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of blue sky laws; negligence; unsuitability; violation of NASD Rules; breach of contract and breach of fiduciary duty. The causes of action related to Claimant's allegations that Boyd erroneously advised Claimant regarding his inheritance of two non-qualified annuities from his aunt. Claimant further asserted that Boyd recommended that Claimant invest in Prudential variable annuities and common stock which were not suitable for Claimant.

Unless specifically admitted in their Answer, Pruco and Prudential denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant failed to mitigate the alleged damages; and Claimant voluntarily and knowingly accepted and assumed all the attendant risks associated with the subject investment.

Unless specifically admitted in his Answer, Boyd denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant failed to mitigate the alleged damages; and Claimant voluntarily and knowingly accepted and assumed all the attendant risks associated with the subject investment.

In his Motion to Dismiss, Boyd asserted that the inherited annuities of which Claimant complains, were fully surrendered to his aunt, and at the time of her death, she no longer owned the annuities and accordingly, Claimant did not become entitled to any proceeds from the annuities. Boyd further asserted that Claimant did not purchase a variable annuity from Boyd nor open a Pruco brokerage account following Claimant's aunt's death.

### **RELIEF REQUESTED**

Claimant requested:

|                                     |                |
|-------------------------------------|----------------|
| Compensatory damages                | \$ 200,000.00  |
| Punitive Damages                    | \$ 50,000.00   |
| Interest                            | \$ unspecified |
| Attorneys' Fees                     | \$ unspecified |
| Other Costs                         | \$ unspecified |
| Other Monetary/Non-Monetary Relief: | \$ unspecified |

Pruco and Prudential requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

Boyd requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Pruco and Prudential did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and having appeared through counsel at the pre-hearing conferences is bound by the determination of the arbitration panel on all issues submitted.

On June 6, 2006, Claimant voluntarily withdrew his claims against Pruco Securities, LLC and Prudential Insurance Company of America.

At the hearing on June 12, 2006, after reviewing the written submissions and the arguments of the parties, the panel determined that Claimant's voluntary dismissal of Respondents Pruco Securities, LLC and Prudential Insurance Company of America was with prejudice.

In its Order of April 10, 2006, the panel gave Claimant until May 10, 2006, to file a Response to the Motions to Dismiss submitted by Respondents, and set May 22, 2006, for oral arguments on the Motions to Dismiss. After Claimant failed to appear for the oral arguments on May 22, 2006, in its Order of May 24, 2006, the panel extended the date for Claimant to Respond to the Motions until June 5, 2006, and rescheduled the hearing on the Motions to Dismiss on June 12, 2006.

During the telephonic pre-hearing conference on June 12, 2006, Claimant confirmed that he had not filed a written response to the Motions to Dismiss. Claimant argued his response to Boyd's Motion to Dismiss during the pre-hearing conference.

After consideration of the written submissions and the arguments presented on June 12, 2006, the panel granted Respondent Boyd's Motion to Dismiss. The panel determined that Claimant failed to substantiate a claim upon which relief could be granted.

### **AWARD**

After considering the pleadings, the testimony, and the arguments presented at the pre-hearing conferences, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims against Respondent Thomas L. Boyd, each and all, are denied and dismissed with prejudice;
- 2.) Claimant's claims against Respondents Pruco Securities, LLC and Prudential Insurance Company of America, having been withdrawn, are dismissed with prejudice;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Pruco Securities, LLC, and Prudential Insurance Company of America.

|                         |               |
|-------------------------|---------------|
| 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 hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing 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:

|   |                     |
|---|---------------------|
| Five (5) Pre-hearing sessions with Panel x \$1,125.00 | = \$ 5,625.00       |
| Pre-hearing conferences:                              |                     |
| February 2, 2006                                      | 1 session           |
| March 20, 2006  | 1 session           |
| April 10, 2006  | 1 session           |
| May 22, 2006  | 1 session           |
| June 12, 2006   | 1 session           |
| <hr/> Total Forum Fees                                | <hr/> = \$ 5,625.00 |

The Arbitration Panel has assessed \$5,625.00 of the forum fees to Robert J. Robinson, Sr.

**Fee Summary**

Claimant, Robert J. Robinson, Sr., is liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 300.00   |
| Forum Fees                          | = \$ 5,625.00 |
| Total Fees                          | = \$ 5,925.00 |
| Less payments                       | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

Respondent, Pruco Securities, LLC, is liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 5,200.00 |
| Total Fees                          | = \$ 5,200.00 |
| Less payments                       | = \$ 2,450.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,750.00 |

Respondent, Prudential Insurance Company of America, is liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 5,200.00 |
| Total Fees                          | = \$ 5,200.00 |
| Less payments                       | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 5,200.00 |

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

**ARBITRATION PANEL**

Robert J. Scafuri, Esq. - Public Arbitrator, Presiding Chair

Robert F. Fearon - Public Arbitrator

William H. Morris, CPA, CFA - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert J. Scafuri, Esq.  
Robert J. Scafuri, Esq.  
Public Arbitrator, Presiding Chair

06/13/06  
Signature Date

/s/ Robert F. Fearon  
Robert F. Fearon  
Public Arbitrator

06/12/06  
Signature Date

/s/ William H. Morris, CPA, CFA  
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Date of Service (For NASD office use only)

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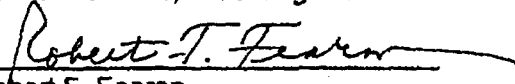
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