

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

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In the Matter of the Arbitration Between

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Name of Claimant

Susan McMahon

and

Case Number: 05-00911  
Hearing Site: Houston, Texas

Names of Respondents

Prudential Equity Group, LLC,  
Alberto Santos and  
Phillip Roland Valadez

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Susan McMahon ("**Claimant**") was represented by Alex Katzman, Esq., Katzman & Katzman, San Antonio, Texas.

Prudential Equity Group, LLC ("**Prudential**"), Alberto Santos ("**Santos**") and Phillip Roland Valadez ("**Valadez**") were represented by Michael Cosentino, Esq., Seegel, Lipshultz & Wilchins, PC, Wellesley, Massachusetts.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 22, 2005. The Submission Agreement of Claimant, Susan McMahon, was signed on or about February 14, 2005.

The Statement of Answer was filed jointly by Respondents, Prudential Equity Group, LLC and Alberto Santos, on or about June 2, 2005. The Submission Agreement of Respondent, Prudential Equity Group, LLC, was signed on or about June 2, 2005. The Submission Agreement of Respondent, Alberto Santos, was signed on or about July 12, 2005.

The Statement of Answer was filed by Respondent, Phillip Roland Valadez, on or about January 24, 2006. Respondent Valadez adopted the Answer of Respondents, Prudential and Santos.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations and suitability. The causes of action related to recommendation and purchase of various unspecified securities. Claimant alleged that Respondents advised her to invest in investments for which she did not have risk tolerance and failed to diversify the investments in her account. Claimant alleged that Respondent Santos advised her to cash in her CDs and suffer early withdrawal penalties because she would make more money in the market. Also, Claimant alleged that she requested \$25,000 be invested in a CD, however Respondent Valadez invested the money in a Ford Motor Credit Bond. In conclusion, Claimant alleged that through Respondents acts and omissions, including misrepresentations, unsuitable recommendations and lack of supervision, she suffered losses in her accounts.

Unless specifically admitted in their Answer, Respondents, Prudential, Santos and Valadez, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimant is estopped and barred by her own conduct from recovering any relief; Claimant failed to mitigate her damages; the Statement of Claim is barred in whole or in part by Claimant's own contributory and/or comparative fault; Claimant's claims are barred by the applicable statute of limitations; and Claimant may not recover anything against Respondents because Claimant ratified all of the activity in her accounts.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$227,000.00
Punitive/Exemplary Damages	\$100,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, Prudential and Santos, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondent Valadez requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees and for this claim to be expunged from his CRD record.

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

Respondent, Phillip Roland Valadez, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

On or about July 11, 2005, Claimant filed a Motion for Leave to Amend the Statement of Claim. Respondents, Prudential and Santos, filed their Response to the Motion for Leave on or about August 3, 2005. The Panel granted Claimant's Motion for leave to Amend the Statement of Claim on or about September 15, 2005.

On or about December 8, 2005, the Panel issued an Order granting the Claimant's Motion for Leave to File a Second Amended Statement of Claim.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Respondents, Prudential Equity Group, LLC and Alberto Santos, are jointly and severally liable for and shall pay to Claimant, Susan McMahon, the sum of \$41,905.99 in compensatory damages;
- 2.) Respondents, Prudential Equity Group, LLC and Alberto Santos, are jointly and severally liable for and shall pay to Claimant, Susan McMahon, interest at the rate of 5% pursuant to Texas law from and including 4/1/2003 through and including the date the Award is paid in full;
- 3.) Respondent's, Phillip Roland Valadez, request for this claim to be expunged from his CRD record is denied;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

- 5.) 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 the non-refundable filing fee 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Prudential Equity Group, LLC.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: January 18, 2006 1 session

February 6, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: July 29, 2005 1 session

Six (6) Hearing sessions x \$1,125.00 = \$ 6,750.00

Hearing Dates: February 28, 2006 2 sessions

March 1, 2006 2 sessions

March 2, 2006 2 sessions

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Total Forum Fees = \$ 8,775.00

The Arbitration Panel has assessed \$8,775.00 of the forum fees jointly and severally to Prudential Equity Group, LLC and Alberto Santos.

**Fee Summary**

Claimant, Susan McMahon, is liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
<u>Refund Due to Claimant</u>	= \$ 1,125.00

Respondent, Prudential Equity Group, LLC, is liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Prudential Equity Group, LLC and Alberto Santos, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,775.00
<u>Total Fees</u>	= \$ 8,775.00
<u>Less payments</u>	= \$ 100.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 8,675.00

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

ARBITRATION PANEL

Jeff Kilgore, Esq. - Public Arbitrator, Presiding Chair  
David C. Redford, JD - Public Arbitrator  
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Jeff Kilgore, Esq.  
Jeff Kilgore, Esq.  
Public Arbitrator, Presiding Chair

March 3, 2006  
Signature Date

/s/ David C. Redford, JD  
David C. Redford, JD  
Public Arbitrator

March 3, 2006  
Signature Date

/s/ James E. Lane  
James E. Lane  
Non-Public Arbitrator

March 3, 2006  
Signature Date

March 3, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Jeff Kilgore, Esq. - Public Arbitrator, Presiding Chair  
David C. Redford, JD - Public Arbitrator  
James E. Lane - Non-Public Arbitrator

**Concurring Arbitrators:**

*Jeffrey Ore, Esq.*  
Public Arbitrator, Presiding Chair

March 3, 2001  
Signature Date

**David C. Redford, JD**  
**Public Arbitrator**

**Signature Date**

James E. Lane  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Jeff Kilgore, Esq.  
Public Arbitrator, Presiding Chair

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*David C. Redford*  
David C. Redford, JD  
Public Arbitrator

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Signature Date

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*3-3-06*  
Signature Date

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James E. Lane  
Non-Public Arbitrator

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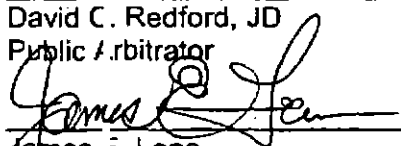
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Jeff Kilgore, Esq.  
Public Arbitrator, Presiding Chair

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