

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Merline C. Leaming and GLFP, LTD., Claimants v. Prudential Equity Group, LLC f/k/a  
Prudential Securities Incorporated, and Wachovia Securities, LLC, Respondents

Case Number: 05-02566

Hearing Site: Salt Lake City, Utah

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Nature of the Dispute: Customers v. Members

**REPRESENTATION OF PARTIES**

For Claimants:

Mark J. Appleton, Esq.  
Robinson Waters &  
O'Dorisio  
Denver, Colorado

For Respondent Prudential Equity Group, LLC:  
f/k/a Prudential Securities, Incorporated ("Prudential")

Steve Varholik, Esq.  
Garvey Schubert Barer  
Washington, DC

For Respondent Wachovia Securities, LLC:  
("Wachovia")

Kevin Hurley, Esq.  
Wachovia Securities, LLC  
Richmond, Virginia

**CASE INFORMATION**

Statement of Claim filed: May 13, 2005

Amended Statement of Claim filed: May 24, 2005

Second Amended Statement of Claim filed: August 22, 2005

Claimant Merline C. Leaming's Uniform Submission Agreement signed: May 10, 2005

Claimant GLFP, LTD's Uniform Submission Agreement signed: May 10, 2005

Statement of Answer filed by Respondent Prudential: August 26, 2005

Statement of Answer to Second Amended Statement of Claim filed by Respondent  
Prudential: August 30, 2005

Respondent Prudential's Uniform Submission Agreement signed: August 26, 2005

### **CASE SUMMARY**

Claimants alleged that Prudential Financial a/k/a Prudential Securities Inc. became Wachovia Securities a/k/a Wachovia Securities, LLC. Claimants further alleged negligence, breach of fiduciary duty, breach of fiduciary duty under Utah Securities Act, misrepresentation, omission, misrepresentation and omission under the Utah Securities Act including unauthorized trading, misrepresentation and omission under Federal Securities law and Securities and Exchange Act of 1934 and Securities Act of 1933, violation of NASD Suitability Rule, common law agency liability, respondeat superior liability, control person liability, failure to supervise under Federal Securities law and Utah Securities Act, and outrageous conduct. Claimants' allegations involved Albertson shares and other unspecified securities.

Respondent Prudential denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

Respondent Wachovia denied that it was a successor in interest to Prudential Securities Inc. and alleged that the events complained of did not occur in the accounts which Claimants maintained at Wachovia Securities, LLC.

### **RELIEF REQUESTED**

Claimants requested \$725,000.00 in compensatory damages, pre-judgment interest and costs, including attorney's fees.

Respondent Prudential requested dismissal of the Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

Respondent Wachovia requested that Claimants voluntarily dismiss their claims against Wachovia, and costs, including attorney's fees.

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

Respondent Wachovia did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Wachovia contended that it is not a successor in interest to Prudential and therefore should not be named as a party to this arbitration. On or about November 18, 2005, the parties jointly agreed to dismiss Respondent Wachovia from the above-referenced arbitration.

On or about May 24, 2005, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On or about August 22, 2005, Claimants filed a Second Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

### **FINDINGS AND CONCLUSIONS**

The Panel believes that Fred Moreton, a broker employed to Respondent Prudential, engaged in unauthorized transactions in Claimants' accounts at Prudential. However, because the Panel finds that upon discovery of the unauthorized trades the Claimants failed to tender them to the Respondent Prudential as required under Utah Securities law, the Panel will make no award as to this claim.

One of Respondent Prudential's exhibits shows that Fred Moreton handwrote on the exhibit "sell Albertsons at 30". Although thereafter the Albertsons' shares never reached \$30.00, the Panel believes that Fred Moreton should have written a limit order and did not do so.

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

- 1) Respondent Prudential Equity Group, LLC f/k/a Prudential Securities Inc. is liable to and shall pay to Claimants the sum of \$140,724.81 in compensatory damages.
- 2) Respondent Prudential Equity Group, LLC f/k/a Prudential Securities Inc. is liable to and shall pay to Claimants interest at a rate of 10% per annum on the sum of \$140,724.81 from the date on which this award is served until payment of this award is made in full.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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
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#### **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 f/k/a Prudential Securities Inc. 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
<b>Total Member Fees</b>	<b>= \$7,000.00</b>

The member firm Wachovia Securities, 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
<b>Total Member Fees</b>	<b>= \$7,000.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

May 31, 2006 to June 2, 2006, joint request for adjournment by all parties      Waived

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

The Panel 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:

(1) Pre-hearing conference session with a single arbitrator @\$450.00/session			= \$450.00
Pre-hearing conference:	February 14, 2006		
(1) Pre-hearing conference session with a single arbitrator @ \$1,200.00/session			
Pre-hearing conference:	October 17, 2005	1 session	= \$1,200.00
(5) Hearing sessions @ \$1,200.00/session			= \$ 6,000.00
Hearing:	July 18, 2006	2 sessions	
	July 19, 2006	2 sessions	
	July 20, 2006	1 session	
<b>Total Forum Fees</b>			<b>= \$ 7,650.00</b>

The Panel assessed \$7,650.00 of the forum fees to Respondent Prudential Equity Group, LLC f/k/a Prudential Securities Inc.

**Fee Summary**

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

Initial Filing Fee	= \$ 375.00
Less payments	= \$(1,575.00)
<b>Refund Due Claimant</b>	<b>= \$(1,200.00)</b>

2. Respondent, Prudential Equity Group, LLC f/k/a Prudential Securities, Inc., is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 7,650.00
Total Fees	= \$14,650.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,650.00</b>

3. Respondent, Wachovia Securities, LLC , is charged with the following fees and costs:

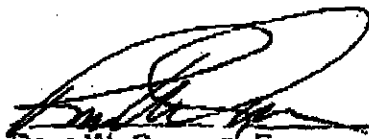
Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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**

Ross W. Cannon, Esq.	•	Public Arbitrator, Presiding Chair
James R. Herwig	•	Public Arbitrator
Cherie J. Jolly	•	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Ross W. Cannon, Esq.  
Chair, Public Arbitrator

8/1/06  
Signature Date

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James R. Herwig  
Public Arbitrator

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

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Cherie J. Jolly  
Non-Public Arbitrator

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

8/3/06  
Date of Service

**ARBITRATION PANEL**

**Ross W. Cannon, Esq.**  
**Chair**

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**Public Arbitrator, Presiding**

**James R. Herwig**

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**Public Arbitrator**

**Cherie J. Jolly**

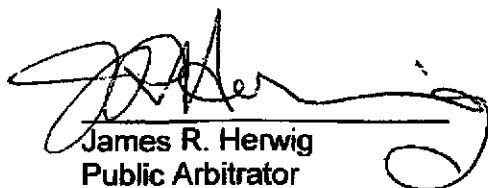
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**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

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Ross W. Cannon, Esq.  
Chair, Public Arbitrator

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Signature Date

  
James R. Herwig  
Public Arbitrator

  
Signature Date

\_\_\_\_\_  
Cherie J. Jolly  
Non-Public Arbitrator

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



8/3/06  
Date of Service

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Cherie J. Jolly	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Chair, Public Arbitrator

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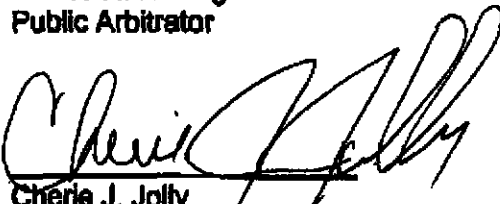
Signature Date

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James R. Herwig  
Public Arbitrator

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Signature Date



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Cherie J. Jolly  
Non-Public Arbitrator

8/10/06

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Signature Date

8/3/06

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Date of Service