

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

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In the Matter of the Arbitration Between:

Name of Claimant

Sharon Bennett

vs.

Case Number: 05-04081  
Hearing Site: Dallas, Texas

Names of Respondents

Tracy Lane Melder, Rudolph Andrew Hanson, Jr.,  
Conseco Securities, Inc., f/k/a Conseco Financial  
Services, Inc., ProEquities, Inc., and Legend  
Equities Corporation

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**NATURE OF THE DISPUTE**

Customer vs. Members, Terminated Member and Associated Persons

**REPRESENTATION OF PARTIES**

Sharon Bennett ("Claimant") was represented by Trey Allen, Esq., Trey Allen, P.C., Dallas, Texas.

Tracy Lane Melder ("Melder") was represented by Christopher P. Graham, Esq., Chamberlain Hrdlicka, Houston, Texas.

Rudolph Andrew Hanson, Jr. ("Hanson") did not appear.

Conseco Securities, Inc., f/k/a Conseco Financial Services, Inc. ("Conseco") was represented by William J. Long, Esq., Burr & Forman, LLP, Birmingham, Alabama.

ProEquities, Inc. ("ProEquities") was represented by Melinda J. Lucas, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

Legend Equities Corporation ("Legend") was represented by Jeff I. Nicodemus, Esq., Cowles & Thompson, Dallas, Texas.

### **CASE INFORMATION**

The Statement of Claim was filed on or about August 8, 2005. The Submission Agreement of Claimant was signed on or about July 20, 2005. The Response to Respondent Melder's Motion to Dismiss, Respondent ProEquities' Motion to Dismiss or, in the Alternative, Motion for More Definite Statement of Claim, and Respondent Conseco's Motion to Dismiss was filed by Claimant on or about August 4, 2006.

The Statement of Answer, Motion to Dismiss, and Motion to Expunge was filed by Respondent Melder on or about March 22, 2006. The Submission Agreement of Respondent Melder was signed on or about March 15, 2006.

The Statement of Answer and Motion to Dismiss was filed by Respondent Conseco on or about March 16, 2006. The Submission Agreement of Respondent Conseco was signed on or about March 14, 2006.

The Statement of Answer was filed by Respondent ProEquities on or about March 21, 2006. The Submission Agreement of Respondent ProEquities was signed on or about January 4, 2006. The Motion to Dismiss or, in the Alternative, Motion for More Definite Statement of Claim was filed by Respondent ProEquities on or about May 26, 2006. The Reply Memorandum in Further Support of its Motion to Dismiss or, in the Alternative, Motion for More Definite Statement of Claim was filed by Respondent ProEquities on or about August 17, 2006.

The Statement of Answer was filed by Respondent Legend on or about March 16, 2006. The Submission Agreement of Respondent Legend was signed on or about March 14, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violation of the Texas Deceptive Trade Practices Act-Consumer Protection Act; breach of contract; promissory estoppel; violation of the Federal Securities Act; violation of the Texas Securities Act; violation of Section 27.01 of the Texas Business and Commerce Code (the "Texas Stock Fraud Statute"); breach of duty care, loyalty and fair dealing; negligent misrepresentation; violation of NASD and NYSE Rules; and negligence. The causes of action related to the recommendation and purchase of a variable annuity product. Claimant alleged that as a result of Respondents' recommendations, she took an IRS Rule 72(t) early IRA distribution and purchased a variable annuity product for the plan in lieu of Claimant's existing IRA rollover and mutual fund investment. As a result, Claimant alleged a loss of her retirement savings, as well as IRS withdrawal penalties for failing to meet the requirements of IRS Rule 72(t).

Unless specifically admitted in his Answer, Respondent Melder denied the allegations

made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim must be dismissed as failing to state a claim upon which relief can be granted; all claims except gross negligence and willful misconduct were contractually waived; Claimant, at all times, retained and exercised complete control over her account, and therefore, Melder never became a fiduciary agent; Claimant's claims are barred by the statute of limitations; Claimant is barred from recovery by the doctrines of waiver, estoppel, ratification, and laches; Claimant failed to plead the causes of action under the Federal Securities Act of 1934 with the requisite specificity; and Melder acted in accordance with his duties and is not liable for breach of the duty of care, loyalty or fair dealing, or any NASD violations.

Unless specifically admitted in its Answer, Respondent Conseco denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim failed to state a claim upon which relief could be granted; Claimant failed to identify any contract or obligation alleged to have been breached by Conseco; Conseco acted lawfully and appropriately under the circumstances; Conseco made no unsuitable security recommendations to Claimant and engaged in no unsuitable security transactions; any losses sustained by Claimant were the result of her own actions or inactions, or the result of intervening third parties and/or market conditions over which Conseco had no control; Claimant received a benefit from the products purchased which has not been credited or returned; any losses sustained by Claimant are a result of her own contributory negligence; Claimant failed to mitigate any alleged damages; each of Claimant's claims is precluded by its respective statute of limitations; to the extent Conseco owed Claimant a duty of care, Conseco honored and fulfilled this duty; Conseco at all times used reasonable care in its dealings with Claimant; Conseco avers the affirmative defenses of independent contractor, consent, equitable estoppel, laches, accord and satisfaction, justification and waiver; any reliance alleged by the Claimant was not justifiable and/or reasonable in the premises; Conseco performed all obligations, if any owed to Claimant; Conseco has not tortiously injured Claimant; Conseco did not breach any duty or obligation allegedly owed to Claimant; no action by Conseco was the proximate or actual cause of injury to Claimant; any injury to Claimant was caused by persons or entities other than Conseco; there is no basis in law or fact for Claimant's claims; Claimant assumed the risk of the market; Conseco is not guilty of any conduct that would warrant an award of punitive damages in this proceeding and an award of punitive damages would serve no purpose for which punitive damages are awarded; and to the extent so required, Conseco complied with all applicable codes, standards, regulations, and laws adopted or promulgated by the National Association of Securities Dealers, the United States, the State of Texas, or any other state government or federal or state agency.

Unless specifically admitted in its Answer, Respondent ProEquities 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's claims are barred by the applicable statute of limitations; Claimant's claims are barred by waiver, ratification, acquiescence, and estoppel; ProEquities is not the proximate cause of

Claimant's alleged losses; Claimant was contributorily negligent; Claimant's claims are barred by the equitable doctrine of laches; Claimant's losses were not foreseeable; Claimant assumed the risk of the market; Claimant's losses, if any, were market losses that were not caused by ProEquities and for which ProEquities should not be held liable; Claimant failed to timely notify ProEquities, either orally or in writing, of complaints arising out of the account and therefore, is waived and estopped from bringing the claim; Claimant failed to mitigate her alleged damages and, in addition, affirmatively incurred damages for which she is solely responsible; Claimant authorized and approved all of the transactions in her account and, therefore, is barred from asserting the claims herein; ProEquities conducted itself in a professional manner, did not breach any duties owed to Claimant, and acted in good faith and without knowledge of any wrongdoing or improper activity in the Claimant's accounts; ProEquities did not act with any intent to defraud Claimant or with any willful disregard for her; ProEquities did not misrepresent facts or fail to disclose material facts; any and all duties owed to Claimant were fully and faithfully performed; ProEquities had in place adequate supervisory procedures that it reasonably implemented and followed; Claimant is not entitled to attorneys' fees as a matter of law; ProEquities denied that it engaged in any conduct in violation of the applicable state securities laws or any other principles of common law; ProEquities denies that it engaged in any conduct in violation of the federal securities laws or any of the rules promulgated thereunder; ProEquities denied that under the facts of this case it owed any fiduciary duty to Claimant; any and all trades within Claimant's accounts were suitable in light of Claimant's needs, expressed investment objectives and financial status; ProEquities denied liability under theories of respondeat superior or vicarious liability, and denied that it was negligent or breached any contractual obligations with respect to Claimant; and opinions relating to future performance are not actionable.

Unless specifically admitted in its Answer, Respondent Legend denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred in whole or in part by the applicable statute of limitations and the defenses of waiver laches and estoppel; Claimant's claims fail because the alleged investment losses were caused by her failure to mitigate damages; Claimant's claims fail because her own actions and negligence caused the alleged losses; Claimant's claims are barred in whole or in part by the doctrines of account stated, assumption of risk and ratification.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified

### Other Monetary Relief

### Unspecified

Respondent Melder requested that the claims asserted against him be denied in their entirety and that his CRD record be expunged of any reference to this claim.

Respondent Conseco requested that the claims asserted against it be denied in their entirety, that it be awarded its costs and attorneys' fees, and that this matter be expunged from CRD.

Respondent ProEquities requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Legend requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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

Respondent Hanson did not file a Statement of Answer or an executed Submission Agreement. At the Initial Pre-Hearing Conference held on June 19, 2006, the Panel was advised that Mr. Hanson was deceased.

On August 25, 2006, a telephonic hearing was held on the Motions to Dismiss filed by Respondents, Melder, Conseco, and ProEquities. After hearing the arguments presented by the parties, the Panel found that Claimant's claims are barred by the statutes of limitations. Therefore, the Panel ruled that the Motions were granted and that all claims asserted by Claimant against Respondents, Tracy Lane Melder, Conseco Securities, Inc., f/k/a Conseco Financial Services, Inc., ProEquities, Inc. and Legend Equities Corporation were denied and dismissed with prejudice. The Panel further found that the claims against Rudolph Andrew Hanson, Jr. are dismissed without prejudice pursuant to Rule 10305 of the Code of Arbitration Procedure. The Panel denied both Melder's and Conseco's request that this case be expunged from the CRD record.

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

- 1.) Claimant Sharon Bennett's claims against Respondents, Tracy Lane Melder, Conseco Securities, Inc., f/k/a Conseco Financial Services, Inc.,

- ProEquities, Inc. and, Legend Equities Corporation, each and all, are hereby denied and dismissed with prejudice;
- 2.) Pursuant to Rule 10305 of the NASD Code of Arbitration Procedure, Claimant's claims against Respondent, Rudolph Andrew Hanson, Jr., each and all, are hereby dismissed without prejudice and the Claimant, Sharon Bennett, is hereby referred to her judicial remedies;
  - 3.) Respondents, Tracy Lane Melder's and Consecro Securities, Inc., f/k/a Consecro Financial Services, Inc.'s request for expungement of the 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 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 = \$ 250.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are Consecro Securities, Inc., f/k/a Consecro Financial Services, Inc., ProEquities, Inc., and Legend Equities Corporation.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

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

The Panel has assessed forum fees for each hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,000.00	= \$ 2,000.00
Pre-hearing conferences: June 19, 2006	1 session
August 25, 2006	1 session
<hr/> Total Forum Fees	<hr/> = \$ 2,000.00

The Panel has assessed \$1,500.00 of the forum fees to Claimant, Sharon Bennett.

The Panel has assessed \$125.00 of the forum fees to Respondent Tracy Lane Melder.

The Panel has assessed \$125.00 of the forum fees to Respondent Consec Securities, Inc., f/k/a Consec Financial Services, Inc.

The Panel has assessed \$125.00 of the forum fees to Respondent ProEquities, Inc.

The Panel has assessed \$125.00 of the forum fees to Respondent Legend Equities Corporation.

### **FEE SUMMARY**

Claimant, Sharon Bennett, is liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 1,500.00
<hr/> Total Fees	<hr/> = \$ 1,750.00
Less payments	= \$ 1,250.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 500.00

Respondent, Tracy Lane Melder, is liable for:

Forum Fees	= \$ 125.00
<hr/> Total Fees	<hr/> = \$ 125.00
Less payments	= \$ 0.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 125.00

Respondent, Consec Securities, Inc., f/k/a Consec Financial Services, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
<hr/> Total Fees	<hr/> = \$ 4,575.00
Less payments	= \$ 4,450.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 125.00

Respondent, ProEquities, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
<u>Total Fees</u>	<u>= \$ 4,575.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent, Legend Equities Corporation, is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
<u>Total Fees</u>	<u>= \$ 4,575.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 125.00

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

**ARBITRATION PANEL**

Michael P. Geary - Public Arbitrator, Presiding Chair  
Andrea U. Calve, JD - Public Arbitrator  
Charles T. Dix - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Michael P. Geary  
Public Arbitrator, Presiding Chair

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Signature Date

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Andrea U. Calve, JD  
Public Arbitrator

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Signature Date

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Charles T. Dix  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)



Received at: 2:48PM, 10/10/2006

10/10/2006 14:58 FAX 312 898 4407

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NASD Dispute Resolution  
Arbitration No. 05-04081  
Award Page 8 of 8

Respondent, ProEquities, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent, Legend Equities Corporation, is liable for:

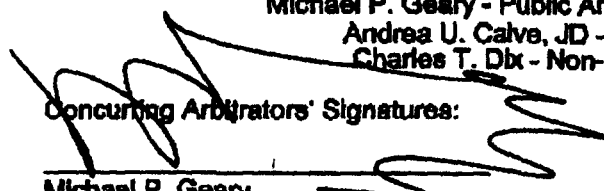
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

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Andrea U. Calve, JD - Public Arbitrator  
Charles T. Dix - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

  
Michael P. Geary  
Public Arbitrator, Presiding Chair

Oct. 10, 2006  
Signature Date

Andrea U. Calve, JD  
Public Arbitrator

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

Charles T. Dix  
Non-Public Arbitrator

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

10/12/06  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 05-04081  
 Award Page 8 of 8

Respondent ProEquities, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent Legend Equities Corporation, is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

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 Andrea U. Calve, JD - Public Arbitrator  
 Charles T. Dix - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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 Michael P. Geary  
 Public Arbitrator, Presiding Chair

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

  
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 Andrea U. Calve, JD  
 Public Arbitrator

11/9/06  
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 Signature Date

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 Charles T. Dix  
 Non-Public Arbitrator

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

10/12/06   
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 Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 05-04081  
 Award Page 8 of 9

Respondent, ProEquities, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent, Legend Equities Corporation, is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 125.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 125.00

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

#### ARBITRATION PANEL

Michael P. Geary - Public Arbitrator, Presiding Chair  
 Andrea U. Calve, JD - Public Arbitrator  
 Charles T. Dix - Non-Public Arbitrator

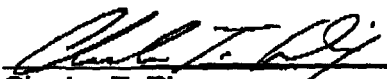
Concurring Arbitrators' Signatures:

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 Michael P. Geary  
 Public Arbitrator, Presiding Chair

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

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 Andrea U. Calve, JD  
 Public Arbitrator

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 Charles T. Dix  
 Non-Public Arbitrator

10-12-06  
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