

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Daryl Hagler and Meryl Hagler (Claimants) v. Prudential Securities Incorporated  
nka Prudential Equity Group, LLC, and William Roth (Respondents)

Case Number: 05-05150

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Daryl Hagler and Meryl Hagler hereinafter collectively referred to as "Claimants" appeared *pro se*. Previously represented by John J. Phelan, III, New York, NY.

Respondent Prudential Securities Inc., nka Prudential Equity Group, LLC ("Prudential"): Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, NY.

Respondent William Roth ("Roth") appeared *pro se*. Previously represented by Kevin Deloatch, Esq., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 3, 2005.

Daryl Hagler signed the Uniform Submission Agreement: September 30, 2005.

Meryl Hagler signed the Uniform Submission Agreement: September 30, 2005.

Statement of Answer filed by Prudential on or about: November 23, 2005.

Prudential signed the Uniform Submission Agreement: December 6, 2005.

Statement of Answer filed by Roth on or about: December 23, 2005.

Roth signed the Uniform Submission Agreement: December 7, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; churning; breach of contract; breach of fiduciary duty; respondeat superior; failure to supervise; and fraud. Claimants' claims involved unspecified highly speculative high-tech securities.

Unless specifically admitted in its Answer, Prudential denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Roth denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$100,000.00, plus punitive damages in an amount to be determined by the Arbitrators but no less than \$5,000,000.00, filing fees, costs, hearing fees and other fees in connection with this proceeding.

Prudential requested that the Panel dismiss the Statement of Claim in its entirety, an award of its costs and expenses, and such other and further relief as it deems appropriate.

Roth requested that the Statement of Claim be dismissed and that the costs of the proceeding be assessed against Claimants.

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

A third initial pre-hearing conference was scheduled for and held on July 24, 2006. During this conference Claimants failed to participate or designate a representative to participate on their behalf. Prudential made a motion to dismiss the claim with prejudice based upon Claimants' failure to participate in the process.

After due deliberation, the Panel determined to grant the Motion and provided Claimants with an opportunity to respond or withdraw the claim by August 21, 2006. As of the date of this Award, Claimants did not respond or withdraw the claim.

Prudential and Roth, the only parties to participate at the initial pre-hearing conference, 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 Respondent Prudential's oral motion to dismiss, presented at the July 24, 2006 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed, with prejudice, in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$ 600.00
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#### **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. Accordingly, Prudential Securities Incorporated nka Prudential Equity Group, LLC is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00

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

The Panel has assessed forum fees for each session conducted. 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 @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: June 22, 2006      1 session	
July 24, 2006      1 session	
<hr/> Total Forum Fees	<hr/> = \$2,400.00

1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Claimants.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$2,400.00
<hr/> Total Fees	<hr/> = \$3,000.00
<hr/> Less payments	<hr/> = \$1,800.00

Balance Due NASD Dispute Resolution = \$1,200.00

2. Respondent Prudential is solely liable for:

<u>Member Fees</u>	= \$ 4,100.00
<u>Total Fees</u>	= \$ 4,100.00
<u>Less payments</u>	= \$ 4,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00


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

**ARBITRATION PANEL**

William E. Nuckel	-	Public Arbitrator, Presiding Chairperson
Judith C. Zerden, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
William E. Nuckel  
Public Arbitrator, Presiding Chairperson

9/1/06  
Signature Date

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Judith C. Zerden, Esq.  
Public Arbitrator

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Signature Date

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Jerome H. Levy  
Non-Public Arbitrator

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Signature Date

September 8, 2006  
Date of Service (For NASD Dispute Resolution use only)

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