

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

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In the Matter of the Arbitration Between:

Name of Claimant

Dorothy P. Kring

vs.

Case Number: 05-06147  
Hearing Site: Dallas, Texas

Name of Respondent

Pruco Securities, LLC

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**NATURE OF THE DISPUTE**

Customer vs. Member

**REPRESENTATION OF PARTIES**

Dorothy P. Kring ("Claimant") was represented by Tricia L. Legittino, Esq., SimmonsCooper, LLC, East Alton, Illinois.

Pruco Securities, LLC ("Respondent") was represented by Michelle M. Arbitrio, Esq. Wilson, Elser, Moskowitz, Edelman & Dicker LLP, White Plains, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 5, 2006. The Submission Agreement of Claimant was signed on or about November 1, 2005.

The Statement of Answer was filed by Respondent on or about March 1, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of the Texas Securities Act; violation of the Texas Deceptive Trade Practices-Consumer Protection Act; and negligence. The causes of action related to the recommendation and purchase of the Discovery Select variable annuity. Claimant alleged that the Respondent failed to fully inform her of the costs and consequences of converting her mutual fund investments to a variable annuity. In addition, Claimant alleged that Respondent's recommendations to the sub-accounts in the annuity were unsuitable for someone of her age and circumstances.

Unless specifically admitted in its Answer, Respondent 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 could be granted; the claims are barred by the doctrines of estoppel, waiver, ratification, and laches; the Claimant failed to mitigate the alleged damages; any damages were caused by Claimant's own culpable conduct, comparative and/or contributory negligence, and/or assumption of the risks; the Claimant suffered no damages by reason of the acts complained of in the Statement of Claim; Respondent is not liable to the Claimant because at all times relevant herein, Respondent acted properly and in good faith with respect to the Claimant's account; all transactions recommended to and made for or on behalf of the Claimant were suitable for and in accordance with the Claimant's investment objectives and financial condition; any alleged losses were the direct result of adverse market conditions and/or acts of the issuer of the securities at issue and cannot be attributed to the Respondent; to the extent the Statement of Claim seeks damages for an alleged breach of fiduciary duty, Claimant failed to state a claim upon which relief can be granted because there exists no per se fiduciary duty between broker and customer; Respondent maintained an adequate and reasonable system of supervision and control over its employees, and at all times acted in good faith and did not at any time, directly or indirectly, induce any acts or acts constituting a violation or cause of action; and Claimant is not entitled to an award of attorneys' fees, punitive damages, interest or the cost of the proceeding.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$118,789.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent 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 did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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

- 1.) Respondent, Pruco Securities, LLC, is liable for and shall pay to Claimant, Dorothy P. Kring, the sum of \$60,000 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Pruco Securities, LLC.

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 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: September 1, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: April 6, 2006 1 session

Nine (9) Hearing sessions x \$1,125.00 = \$10,125.00  
Hearing Dates: September 6, 2006 2 sessions  
September 7, 2006 2 sessions  
September 8, 2006 2 sessions  
October 4, 2006 2 sessions  
October 5, 2006 1 session

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Total Forum Fees = \$11,700.00

The Panel has assessed \$11,700.00 of the forum fees to Pruco Securities, LLC.

### **FEE SUMMARY**

Claimant, Dorothy P. Kring, is liable for:

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

Respondent, Pruco Securities, LLC, is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 11,700.00
Total Fees	= \$ 16,900.00
Less payments	= \$ 5,950.00
Balance Due NASD Dispute Resolution	= \$ 10,950.00

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

**ARBITRATION PANEL**

Lawrence R. Maxwell, Jr., Esq. - Public Arbitrator, Presiding Chair  
Synthia L. Demons - Public Arbitrator  
G. Dale McKissick - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

\_\_\_\_\_  
Lawrence R. Maxwell, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Synthia L. Demons  
Public Arbitrator

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

\_\_\_\_\_  
G. Dale McKissick  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

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Synthia L. Demons - Public Arbitrator  
G. Dale McKissick - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

*LR Maxwell Jr.*

Lawrence R. Maxwell, Jr., Esq.  
Public Arbitrator, Presiding Chair

10.25.06

Signature Date

Synthia L. Demons  
Public Arbitrator

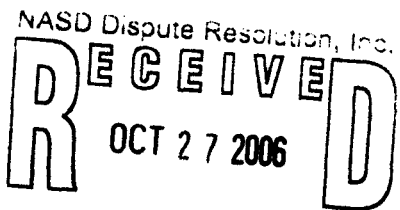
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G. Dale McKissick  
Non-Public Arbitrator

Signature Date

10/26/06/lu

Date of Service (For NASD office use only)



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Signature Date

Synthia Demons

Synthia L. Demons  
Public Arbitrator

10/17/06  
Signature Date

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G. Dale McKissick  
Non-Public Arbitrator

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Signature Date

10/26/06

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Lawrence R. Maxwell, Jr., Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

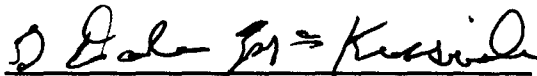
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Synthia L. Demons  
Public Arbitrator

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Signature Date

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G. Dale McKissick  
Non-Public Arbitrator

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10-16-08

Signature Date

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10/26/08 RLM

Date of Service (For NASD office use only)