

## NASD Regulation, Inc., Award

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### In the Matter of Arbitration Between

Bette Gorra,

Claimant,

and

No. 96-04795

Prudential Securities, Inc., Alan D. Klibanoff,  
Stacy D. Klibanoff, Barry L. Harrison,  
Wendy J. Harrison, John M. Picarello, and  
Karen A Picarello,

Respondents.

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### REPRESENTATION OF PARTIES

Claimant, Bette Gorra ("Gorra") was represented by Raymond S. Heyman, Esquire of Roshka, Heyman & DeWulf, PLC, of Phoenix, Arizona.

Respondents, Prudential Securities, Inc., ("Prudential,") Barry L. Harrison and Wendy J. Harrison (together, "the Harrisons,") were represented by Thomas Galbraith, Esquire of Lewis and Roca of Phoenix, Arizona. Respondents, Alan D. Klibanoff and Stacy D. Klibanoff (together, "the Klibanoffs,") were represented by Michael Salcido, Esquire of the Law Offices of Michael Salcido of Phoenix, Arizona. Respondent John M. Picarello ("Picarello") was represented by Frank Lewis, Esquire of Begam, Lewis, Marks & Wolfe of Phoenix, Arizona.

### CASE INFORMATION

Claimant Gorra's Statement of Claim was filed on or about December 11, 1996. Claimant Gorra's Submission Agreement was signed on October 23, 1996.

Respondents, the Harrisons', Picarello's and Prudential's Statement of Answer was filed on or about February 7, 1997. Respondent, Prudential's Submission Agreement, was signed on February 4, 1997 by First Vice-President at Prudential, Gabriel Loubier. Respondent, Barry Harrison's Submission Agreement was signed on February 6, 1997. Respondent, the Klibanoff's Statement of Answer was filed on or about April 15, 1997. Respondent, Alan D. Klibanoff's Submission Agreement was signed on March 7, 1997. Respondents, the Picarellos' Statement of Answer was filed on or about April 7, 1997. Respondent, John Picarello's Submission Agreement was signed on February 6, 1997.

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### HEARING INFORMATION

There was a pre-hearing held in this matter on October 2, 1997 at 6:30 p.m. The hearing was held on March 2 and 3, 1998, at 9:00 a.m., for two (2) sessions each day and on March 4, 1998, at 8:30 a.m., for one (1) session in Phoenix, Arizona.

### CASE SUMMARY

Bette Gorra, ("Claimant,") alleged that Prudential Securities, Inc., Alan D. Klibanoff, Barry L. Harrison and John M. Picarello mishandled her account at Prudential in selling the securities in Claimant's investment portfolio and reinvesting the sale proceeds in new bonds of a lesser quality and rating, a lesser yield to maturity or yield to call, or a shorter maturity in light of Claimant's investment objectives of safety of principal and income. Claimant also asserted these claims against the wives of Respondents Klibanoff, Harrison and Picarello, claiming their liability due to the classification of Arizona as a community property state. The Arizona Superior Court stayed all claims made against the wife of Respondent John M. Picarello, Karen A. Picarello. Claimant asserted that Respondents' actions constituted violations of the Arizona Securities Act, intentional fraud and fraud by non-disclosure, negligent misrepresentation, negligent supervision, breach of fiduciary duty, churning and a violation of the Conduct Rules of the National Association of Securities Dealers.

Prudential Securities, Inc., Alan D. Klibanoff, Barry L. Harrison and John M. Picarello ("Respondents,") denied any wrongdoing as alleged in the Claimants' Statement of Claim, and denied the liability of the wives of Respondents Klibanoff and Harrison, Stacy D. Klibanoff and Wendy J. Harrison. Instead, they asserted that at all times Claimant knew and approved of Respondents' actions pertaining to her account at Prudential. Respondents asserted the following affirmative defenses: failure to state a claim upon which relief could be granted; knowledge of Claimant concerning her investments and risks therefrom; estoppel; ratification; Respondents' lack of misrepresentations and omissions which Respondents did not and could not have reasonably known of any such statements; assumption of the risk; uncontrollable market fluctuations; lack of legal basis for punitive damages; lack of proximate cause; lack of damages caused by Respondents; Claimant's comparative fault; failure to mitigate damages; lack of actual loss or damage; lack of reliance by Claimant; investments in accordance with investment objectives; and the inapplicability of Arizona law to Claimant's claims.

### RELIEF REQUESTED

Claimant, Bette Gorra, requested an award for actual damages of at least \$455,487.80, consequential damages, pre-judgment interest, costs and attorneys' fees, punitive damages and any other such relief as the panel may deem appropriate.

Respondents, Prudential Securities, Inc., Alan D. Klibanoff, Barry L. Harrison and John M. Picarello, Stacy D. Klibanoff and Wendy J. Harrison requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney fees, and

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any other such relief as the panel may deem appropriate. Respondent Harrison requested that this matter be expunged from his CRD record.

**OTHER ISSUES CONSIDERED AND DECIDED**

Stacy Klibanoff did not voluntarily agree to participate in this arbitration. As such, the NASD Regulation Office of Dispute Resolution forum did not have jurisdiction over her. This fact was recognized by the NASD in an August 1997 voluntary submission request sent to Mrs. Klibanoff. Additionally, Mrs. Klibanoff, through her counsel, requested that the arbitrators dismiss her from these proceedings. At the first scheduled day of hearings, the arbitrators granted her request.

At the hearing in this matter, Respondent made a motion to dismiss the claim. After hearing argument from the parties, and deliberation, the arbitrators denied the motion.

On the third day of hearings in this matter, counsel for Claimant, Bette Gorra, announced that his client wished to voluntarily withdraw her complaint, with prejudice, against all Respondents, with all but Respondent, Picarello, agreeing to bear his or her own attorneys' fees and costs. The action pertaining to Respondent Karen A. Picarello was stayed on September 23, 1997 in the Superior Court of the State of Arizona, in and for the County of Maricopa by Judge Brian R. Hauser.

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 the NASD Regulation, Inc. Office of Dispute Resolution. The record of this matter was closed on April 15, 1998.

**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. That Claimant, Bette Gorra is liable for and shall pay to Respondent, John M. Picarello attorneys' fees in the amount of \$9,000.00;
2. That the NASD expunge all reference to this proceeding from the records of the Respondents, the CRD numbers for Respondents are as follows: Alan D. Klibanoff (CRD # 1675352;) Barry L. Harrison (CRD # 2276512;) and John M. Picarello (CRD# 816793;)
3. That other than forum fees, which are addressed below, all other claims and requests

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for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

**FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 and there were five (5) hearing sessions x \$750.00 = \$4,050.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code," a hearing session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Claimant, Bette Gorra. Claimant, Bette Gorra is liable for all of the forum fees in this matter and shall pay the sum of \$3,300.00 to NASD Regulation, Inc., Office of Dispute Resolution.

Pursuant to Rule 10333 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Respondent, Prudential Securities, Inc.

Pursuant to Rule 10319 of the Code, Prudential is liable for, and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750 for the postponement of the October, 1997 hearing dates.

**Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures:**

<u>David G. Beerbower</u>	/s/	<u>April 17, 1998</u>
David G. Beerbower, Esq.		Date
Chairperson		
Public Arbitrator		

<u>John R. Molloy</u>	/s/	<u>April 21, 1998</u>
John R. Molloy		Date
Panelist, Public Arbitrator		

<u>Daniel O. Birkle</u>	/s/	<u>April 17, 1998</u>
Daniel O. Birkle		Date
Panelist, Industry Arbitrator		