

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Lillian Dworkin, (Claimant) vs. Prudential Securities, Inc. and Marilyn Falls, (Respondents)

Case Number: 99-02081

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Lillian Dworkin, hereinafter referred to as "Claimant": Adolph D. Seltzer, Esq., a sole practitioner, New York, NY.

Respondents, Prudential Securities, Inc. ("Prudential") and Marilyn Falls ("Falls"), hereinafter collectively referred to as "Respondents": Joseph D'Elia, Esq., Law Offices of Joseph D'Elia, Huntington, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 4, 1999.

Claimant signed the Uniform Submission Agreement: May 4, 1999.

Joint Statement of Answer filed by Respondents on or about: July 14, 1999.

Prudential signed the Uniform Submission Agreement: July 6, 1999.

Falls signed the Uniform Submission Agreement: June 16, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence and recklessness; violations of NYSE and NASD Rules; failure to properly supervise Claimant's account and the transactions therein; failure to investigate and review Claimant's investment objectives; failure to ascertain that Claimant's account was not speculative; failure to warn Claimant of the risks involved with the investment in question; Prudential failed to properly discharge their duties and responsibilities; and mismanagement of Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant directed and authorized the execution of all transactions in her account; Respondents did not make any misrepresentations, false promises, or omissions with respect to the investments made in Claimant's account; any alleged losses were within the risks discussed with Claimant and within which Claimant

chose to assume; the investment in question was suitable for Claimant given Claimant's investment objectives; there is no fiduciary duty owed to Claimant by Respondents with regard to predictions of market results; there were no actions, conduct, or omissions on the part of Respondents which were negligent, reckless, and/or careless; Claimant has not incurred any damages arising out of Respondents' actions; and Respondents acted with due diligence, proper supervision, and otherwise in a competent, responsible, prudent, and professional manner.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$49,550.00 together with interest from March 2, 1998, and an amount to be computed for lost income; the costs and disbursements of this arbitration; reasonable attorneys' fees; and such other and further relief as may be just and proper.

Respondents requested that Claimant's claims be dismissed or denied in their entirety; that all costs be assessed against Claimant; and such other and further relief as the Panel may deem just and proper.

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

During the hearings in this matter, Claimant made a motion for a directed verdict. This motion was denied by the Panel.

### **AWARD**

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

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$44,675.78 as compensatory damages.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 175.00

#### **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, Prudential Securities, Inc. is a party.

Member surcharge = \$ 800.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

July 18 & 19, 2000, adjournment by Respondents = FEE WAIVED

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

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, 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: March 23, 2000 1 session

Two (2) Hearing sessions x \$450.00 = \$ 900.00

Hearing Date: July 24, 2000 2 sessions

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Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed \$450.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$450.00 of the forum fees against Prudential.
3. The Arbitrator has assessed \$450.00 of the forum fees against Falls.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 625.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Falls be and hereby is solely liable for:

Forum Fees	= \$ 450.00
Total Fees	= \$ 450.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

3. Prudential be and hereby is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$ 450.00
Total Fees	= \$2,850.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

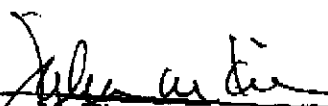
All balances are due and payable to NASD Dispute Resolution, Inc.

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**Arbitrator's Signature**

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 which is my award.

  
Julian M. Kien  
Public Arbitrator

9/1/00  
Signature Date

August 23, 2000  
Date of Service (For NASD office use only)