

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Delbert Snedacker, (Claimant) vs. Prudential Securities, Inc. and Helen Lauderdale, (Respondents).

Case Number: 99-02166

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant, Delbert Snedacker, hereinafter referred to as "Claimant": Larry E. Meyer, Esq., Nelson, McCormick, Hancock & Newton, Houston, Texas.

Respondents, Prudential Securities, Inc. ("Prudential") and Helen Lauderdale ("Lauderdale"), hereinafter collectively referred to as "Respondents": Joseph D'Elia, Esq., Huntington, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 11, 1999

Claimant signed the Uniform Submission Agreement: May 3, 1999

Statement of Answer filed by Respondents on or about: July 30, 1999

Respondent, Prudential, signed the Uniform Submission Agreement: July 28, 1999

Respondent, Lauderdale, signed the Uniform Submission Agreement: July 21, 1999

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; failure to disclose; omissions of fact; fraud; misrepresentation; breach of fiduciary duty; negligence; violations of the Texas Securities Act; and failure to supervise. The causes of action related to Respondents' recommendation of a purchase of 400 shares of Crimi Mae stock on February 9, 1998.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; Claimant directed and authorized the execution of all transactions in her account and was therefore estopped from bringing the action; neither

Respondent was responsible for losses because they were within the risks discussed with Claimant and within which Claimant chose to assume; there was no conflict of interest which existed or which was required to be disclosed to Claimant at any time; Claimant had not incurred any damages arising out of the actions of Respondents; counsel fees may not be recovered by Claimant under the laws of the state of New York, by which the arbitration was governed by contractual agreement; there existed no violations of the Texas Securities Act; and there was no fiduciary duty owed to Claimant by Respondents with regard to prediction of market results.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$5,654.05
Interest	unspecified
Attorneys' Fees	reasonable in an amount of not less than \$3,500
Other Costs	unspecified

In the Statement of Answer, Respondents requested:

Dismissal	
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

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

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

1. Respondents, Prudential Securities, Inc. and Helen Lauderdale, are jointly and severally liable for and shall pay to Claimant, Delbert Snedaker, \$5,654.05 plus simple interest at the rate of 10% per annum from March 29, 1999 through the date of this award and post judgment interest at the rate of 18% per annum from 30 days after the date of this award until paid;
2. Respondents, Prudential Securities, Inc. and Helen Lauderdale, are jointly and severally liable for and shall pay to Claimant, Delbert Snedaker, \$4,472.30 in attorneys' fees. The Arbitrator considered the pleadings, the evidence and the

testimony as well as the Texas Securities Act which was the legal authority provided by Claimant;

3. The Arbitrator makes the following specific findings:

The Respondents relied upon the New York Choice of Law provision in the Customer Opening Account Agreement for the proposition that the Texas Securities Act was inapplicable to the Claimant's claim (including attorneys' fees) against the Respondents. The Arbitrator finds that Respondents' reliance on said choice of law provision is in conflict with the antiwaiver provisions of the Texas Securities Act. See also, Harlson v. E.F. Hutton Group, Inc., 919 F.2d 1014, (5<sup>th</sup> Cir. 1990) rehearing denied; cf. Thompson and Wallace of Memphis, Inc. v. Falconwood Corp., 100 F.3d 429 (5<sup>th</sup> Cir. 1996) rehearing denied. The Arbitrator further finds that Respondents' reliance on J. Alexander Securities, Inc. v. Mendez, 21 Cal. Rptr. 2<sup>nd</sup> 826 (Ct. App. 1993), cert. denied, 511 U.S. 1150 (1994) for the proposition that CPLR §7513 prohibits the payment of attorneys' fees under New York Law, is unfounded and in conflict with the holding in Koenigsberg v. Zinn, 381 N.Y.S.2d 248 (1976) as well as the reasoning found in Prudential-Bache Securities, Inc. v. Tanner, 72 F.3d 234 (1<sup>st</sup> Cir. 1995). Based on the similarity between NYSE Rule 629(c) and NASD Rule 10332(c), the attorneys' fees are awardable in this arbitration. The Arbitrator also finds that the rational and reasoning of Anheuser-Busch Companies, Inc. v. Summit Coffee Co., 934 S.W. 2d 705 (Tex. App.-Dallas 1996, writ dismissed by agreement) is more persuasive than that of Reed v. Prudential Securities, Inc., 875 F.Supp. 1285 (S.D. 1995) with respect to the application of the Texas Securities Act to secondary market transactions;

4. Respondents, Prudential Securities, Inc. and Helen Lauderdale, are jointly and severally liable for and shall pay to Claimant, Delbert Snedaker, \$75 in costs for reimbursement of the initial claim filing fee; and

5. Any and all relief not specifically addressed herein is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee = \$75

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Prudential Securities, Inc.

Member surcharge = \$300

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$250 = \$250  
Pre-hearing conferences: November 11, 1999 1 session

Two (2) Hearing sessions x \$250 = \$500  
Hearing Dates: January 19, 2000 2 sessions

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Total Forum Fees = \$750

1. The Panel has assessed \$750 of the forum fees jointly and severally to Helen Lauderdale and Prudential Securities, Inc.

**Fee Summary**

1. Claimant, Delbert Snedacker, be and hereby is solely liable for:

Initial Filing Fee = \$75

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Total Fees = \$75

Less payments = \$325

Refund = \$250

2. Respondent, Prudential Securities, Inc., be and hereby is solely liable for:

Member Fees = \$300

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Total Fees = \$300

Less payments = \$300

Balance Due NASD Regulation, Inc. = \$0

3. Respondents, Prudential Securities, Inc. and Helen Lauderdale, be and hereby are jointly and severally liable for:

Forum Fees	= \$750
Balance Due NASD Regulation, Inc.	= \$750

All balances are due to NASD Regulation, Inc.

  
~~Signature~~ Arbitrator's Signature

Patrick Lanier, Esq.  
Public Arbitrator, Presiding Chair

3/16/2000  
Signature Date

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Date of Service (For NASD office use only)