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Arbitration Panel Orders Prudential To Pay $14.5 Million Penalty to Investors

By SUSANNE CRAIG

AN ARBITRATOR ONCE ACCUSED of being in Wall Street's pocket was part of a panel that unexpectedly returned a $14.5 million penalty against a major Wall Street firm.

In late May, a New York Stock Exchange arbitration panel unanimously ordered Prudential Securities Inc. to pay $11.8 million plus back interest to Charanjit and Harpreet Sahni, a Roslyn Heights, N.Y., couple who alleged that Prudential mismanaged some of their money. From 2000 to 2004, the couple's Prudential account dwindled to less than $1 million from $23 million. **Wachovia** Corp. acquired a 62% stake in Prudential Securities in July 2003 from **Prudential Financial** Inc., which retained a 38% stake.

A Prudential spokesman said of the ruling: "We don't believe this decision conforms with the law, and we are considering taking steps to have the decision vacated."

The case is significant not only for its size—it is the third-largest award ever handed down by an NYSE panel—but also because the couple's lawyer worked to have one of the three arbitrators who heard the case, a former **Merrill Lynch** & Co. employee named Robin Henry, removed from the panel.

In a lawsuit filed in a New York state court against the NYSE, attorney Tom Ajamie alleged that Ms. Henry, 76 years old, failed to disclose some of her ties to Wall Street that should have disqualified her. Among them: While the case was being heard, she was chairman of a charity that received donations from a number of big Wall Street firms.

Ms. Henry did disclose she worked at Merrill Lynch in the 1980s. She was a vice-president-level executive at the Wall Street brokerage house, according to her arbitrator profile, although her exact job description is unknown. In the lawsuit, Mr. Ajamie also alleged Ms. Henry often fell asleep during the arbitration proceedings and coached witnesses.

"Given the issues I faced with the arbitration process, I am shocked by the outcome," said Mr. Ajamie, of Houston. Ms. Henry didn't return calls for comment. The NYSE declined to comment.

Mr. Ajamie's legal challenge drew attention because investors have been complaining for years that the arbitration system is stacked in favor of Wall Street. The debate intensified amid a flood of new arbitration claims following the bursting of the Internet bubble in 2000.

Top Five NYSE Awards

LOSER/Year	WINNER	AWARD, in millions
Enrique Perusquia 2001	Paine Webber* clients who claim they were defrauded	$429.0
Merrill Lynch 2005	Three former brokers fired in the wake of a trading scandal	$15.0
Prudential Securities 2006	A Roslyn Heights, N.Y., couple who claim their account was mismanaged	$14.5
Lehman Brothers 2002	Bear Stearns, over an alleged breach of an agreement	$9.6
Dean Witter* 1998	Kemper Securities*, in a broker-raiding case	$6.0

*Has since been acquired by another company

Most investors who have a complaint against a Wall Street firm like Prudential end up in securities arbitration because firms almost always require clients to agree to this before they open an account. Panels typically have three arbitrators, two of whom don't come from Wall Street and are supposed to represent the public. Ms. Henry filled one of these slots in the case she heard. (The third arbitrator on these panels must come from Wall Street, an effort to ensure knowledge of the inner workings of the brokerage industry.)

Despite the fact that two slots are reserved for public arbitrators, plaintiff lawyers often complain they are biased. For instance, if an arbitrator previously worked as a Wall Street broker, the National Association of Securities Dealers generally classifies the person as public if he or she held the brokerage job for fewer than 20 years and has been out of the business for at least five years. The NYSE has its own rules, including some similar to the NASD's that leave the door open for former Wall Streeters like Ms. Henry to be classified as public. This issue was the subject of a page-one article in The Wall Street Journal in 2005.

In recent years, the Public Investors Arbitration Bar Association, an industry group for plaintiff lawyers, has called for the NASD, the forum where more than 90% of arbitrations are heard, and the NYSE to impose tighter rules on public arbitrators and abolish the industry-arbitrator slot, allowing investors to decide whether they want someone from Wall Street on their panel. This most recent award shows that even an arbitrator with past ties to Wall Street can deliver a big award, possibly undercutting the PIABA's efforts to tighten the rules.

"Regardless of this award, it is critical that the public arbitrator be truly public to ensure the integrity of the system," said PIABA President Robert Banks. "Furthermore, in this case there were questions about her lack of disclosure that still need to be addressed by NYSE."

Mr. Ajamie, who in 2001 won the largest award ever handed down by an NYSE arbitration panel, said that, despite his victory, the system is still in need of repair. "Just because one investor wins in a rare instance does not make the system honest or fair," he said.

Mr. Ajamie said the Sahnis had a discretionary account at Prudential, allowing the broker to trade in the account without having to get consent to trade. The broker, Mr. Ajamie said, increased the couple's exposure to technology companies just as the Internet sector was turning sour in 2000 and failed to diversify the portfolio.

Prudential, in its response to Mr. Ajamie's claim, said the Sahnis were sophisticated investors who knew the risks associated with their investments.

The award, although large, is half of what was sought. "After sifting all the evidence, the panel concluded that the responsibility for the investment losses should appropriately be shared," the panel wrote. The panel, in its page-long decision, concluded that Mr. Sahni and his broker were in effect "partners" in trading the account and "relied on each other constantly." The panel concluded that "Prudential as the ultimate party responsible" should pay approximately half the losses in the account.

Should Prudential appeal the award, it faces an uphill battle. Courts can vacate an award only on a handful of grounds: for bias, fraud or if they find there was "manifest disregard" of the law in the arbitration process.

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