

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

John Franklin

and

03-04415
Kansas City, Missouri

Name of Respondents

Prudential Equity Group, LLC f/k/a Prudential Securities, Inc.

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

John Franklin ("**Claimant**") was represented by Barry R. Grissom, Esq., Grissom Law Offices, Overland Park, Kansas and John J. Miller, Esq., Law Office of John J. Miller, P.C., Kansas City, Missouri.

Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. ("**Respondent**") was represented by Mark A. Stites, Esq., Bioff Finucane Coffey Holland & Hosler, LLP, Kansas City, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about June 17, 2003. Submission Agreement of Claimant John Franklin was signed on June 13, 2003.

Statement of Answer was filed by Respondent Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. on or about September 26, 2003.

CASE SUMMARY

Claimant submitted the following summary:

In his Statement of Claim, Claimant requested damages for Respondent's wrongful conduct, specifically for wrongful discharge, retaliatory discharge, breach of contract, and defamation.

In its Answer, Respondent specifically and generally denied each allegation of wrongdoing and further denied that Claimant sustained any damages due to any act by it. Respondent asserted the following affirmative defenses: Claimant's claim fails to state any cause of

action for which relief may be granted and must be dismissed; Claimant was an at-will employee and his claims must be dismissed; Claimant's damage claims are preempted in whole or in part by ERISA, and are barred in whole or part; and Claimant's claim for punitive damages is barred.

In its Counterclaim, Respondent stated that Claimant signed an employment agreement acknowledging that his "deferred compensation plan" would be forfeited upon termination of his employment and the filing of the Claim entitles Respondent to recovery of its attorney's fees and costs.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award against Respondent for an as-yet undeterminable amount (up to approximately \$750,000) in "upfront" bonuses that would have been paid to him by A.G. Edwards or Morgan Stanley Dean Witter & Co. had Claimant's Form U-5 indicated a voluntary resignation; approximately \$200,00 in deferred compensation, the exact amount of which cannot be determined without access to Respondent's records; an as-yet undeterminable amount with respect to lost commissions for the period from October 11, 2002 through December 31, 2002; approximately \$5,000 in commissions earned in October 2002, which commissions have not been paid to Claimant, and the exact amount of which cannot be determined without access to Respondent's records; approximately \$6,000 with respect to commissions paid by Prudential Investments to Respondent's Kansas City Branch and now owed to Claimant, the exact amount of which damages cannot be determined without access to Respondent's records; an as-yet undeterminable amount with respect to the loss of Sheet Metal Workers No. 2 as a client; approximately \$15,000-20,000 in vacations that Claimant was unable to attend, the exact amount of which cannot be determined at this time; approximately \$4,000 pursuant to Amy Pering's error in handling the transfer of moneys to SHB IDA Money Purchased Pension Plan Accounts, the exact amount of which damages cannot be determined without access to Respondent's records; an as-yet undetermined amount (up to \$25,000) to reimburse Claimant for Jerry Hayes' misappropriation of commissions, the exact amount of which damages cannot be determined without access to Respondent's records; approximately \$1,400 in IRS penalties caused by Claimant's being forced to withdraw over \$14,000 from his 401(k) account; expungement of the Form U-5 filed by Respondent with respect to Claimant, and the filing of a new Form U-5 indicating voluntary resignation; and punitive damages and other relief, including without limitation interest, costs and attorney's fees, as is just and proper.

In its Statement of Answer and Counterclaim, Respondent requested recovery of its attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are denied in their entirety. The Arbitration Panel decided in favor of Respondent and against Claimant on all counts asserted in the Statement of Claim.
2. The Arbitration Panel decided in favor of Claimant and against Respondent on all counts asserted in the Counterclaim asserted in this matter.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$600.00 |
| Counter claim filing fee | = \$500.00 |

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(are) Prudential Equity Group, LLC f/k/a Prudential Securities, Inc.

| | | |
|-------------------------|----|----------|
| Member surcharge | \$ | 2,800.00 |
| Pre-hearing process fee | \$ | 750.00 |
| Hearing process fee | \$ | 5,000.00 |
| Total Member Fees | \$ | 8,550.00 |

Adjournment Fees

Adjournments requested during these proceedings:

| | |
|---|--------------|
| Hearing Date(s), July 21-23, 2004, adjournment requested by Respondent | = \$1,200.00 |
| Hearing Date(s), January 10-14, 2005, adjournment requested by Claimant | = \$1,200.00 |

Forum Fees and Assessments

The Arbitration 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:

| | | | | | |
|----|-----------------------------------|---|----------|----|-----------|
| 2 | Pre-hearing session(s) with Panel | x | 1,200.00 | \$ | 2,400.00 |
| | January 26, 2004 | 1 | session | | |
| | June 9, 2004 | 1 | session | | |
| 10 | Hearing sessions | x | 1,200.00 | \$ | 12,000.00 |
| | May 23, 2005 | 2 | sessions | | |
| | May 24, 2005 | 2 | sessions | | |
| | May 25, 2005 | 2 | sessions | | |
| | May 26, 2005 | 2 | sessions | | |
| | May 27, 2005 | 2 | sessions | | |
| | Total Forum Fees | | | \$ | 14,400.00 |

The Arbitration Panel has assessed \$14,400.00 of the forum fees to John Franklin.

Fee Summary

Claimant, John Franklin, shall be and hereby is liable for:

| | | |
|-------------------------------------|------|-----------|
| Initial Filing Fee | = \$ | 600.00 |
| Adjournment Fee | = \$ | 1,200.00 |
| <u>Forum Fees</u> | = \$ | 14,400.00 |
| Total Fees | = \$ | 16,200.00 |
| <u>Less payments</u> | = \$ | -1,800.00 |
| Balance Due NASD Dispute Resolution | = \$ | 14,400.00 |

Respondent, Prudential Equity Group, LLC f/k/a Prudential Securities, Inc., shall be and hereby is liable for:

| | | |
|-------------------------------------|------|-----------|
| Counterclaim filing fee | = \$ | 500.00 |
| Member Fees | = \$ | 8,550.00 |
| Adjournment Fee | = \$ | 1,200.00 |
| Total Fees | = \$ | 10,250.00 |
| <u>Less payments</u> | = \$ | -7,850.00 |
| Balance Due NASD Dispute Resolution | = \$ | 2,400.00 |

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Hon. Donald B. Clark - Public Arbitrator, Presiding Chair
Michael D. Fitzgerald, Esq. - Public Arbitrator
Jack Rosenfield - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Donald B. Clark

Hon. Donald B. Clark
Public Arbitrator, Presiding Chair

June 14, 2005

Signature Date

/s/ Michael D. Fitzgerald

Michael D. Fitzgerald, Esq.
Public Arbitrator

June 16, 2005

Signature Date

/s/ Jack Rosenfield

Jack Rosenfield
Non-Public Arbitrator

June 17, 2005

Signature Date

June 21, 2005

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-04415
Award Page 6 of 6

NASD Dispute Resolution, Inc.
RECEIVED
JUN 21 2005

Concurring Arbitrators:

Donald B. Clark
Hon. Donald B. Clark
Public Arbitrator, Presiding Chair

6/14/05
Signature Date

Michael D. Fitzgerald, Esq.
Public Arbitrator

Signature Date

Jack Rosenfield
Non-Public Arbitrator


Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-04415
Award Page 6 of 6

Concurring Arbitrators:

Hon. Donald B. Clark
Public Arbitrator, Presiding Chair


Michael D. Fitzgerald, Esq.
Public Arbitrator

Signature Date

JUN 16, 05
Signature Date

Jack Rosenfield
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.

RECEIVED
JUN 20 2005

NASD Dispute Resolution
Arbitration No. 03-04415
Award Page 6 of 6

Concurring Arbitrators:

Hon. Donald B. Clark
Public Arbitrator, Presiding Chair

Signature Date

Michael D. Fitzgerald, Esq.
Public Arbitrator

Signature Date


Jack Rosenfield
Non-Public Arbitrator

6/17/05
Signature Date

Date of Service (For NASD office use only)