

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Robert Morris Friedman

Case Number: 04-01975

Names of the Respondents  
Prudential Insurance Company of America  
Cheryl Borek

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Robert Morris Friedman, hereinafter referred to as "Claimant": Rachelle R. McBride, Esq., Sachs Sax Klein, Boca Raton, Florida.

For Prudential Insurance Company of America, ("Prudential") and Cheryl Borek, ("Borek") hereinafter collectively referred to as "Respondents ": Alan Rose, Esq., Page, Mrachek, Fitzgerald & Rose, P.A., West Palm Beach, Florida and David Bennett Ross, Esq., Seyfarth Shaw, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 22, 2004.

Claimant signed the Uniform Submission Agreement on: September 15, 2004.

Respondent Prudential's Answer and Affirmative Defenses filed on or about: January 25, 2005.

Claimant's Reply to Respondent's Affirmative Defenses filed on or about: February 16, 2005.

Amended Statement of Claim filed on or about: April 12, 2005.

Respondents Prudential and Borek's Answer and Affirmative Defenses to Amended Statement of Claim filed on or about: April 22, 2005.

Claimant's Reply to Respondents' Affirmative Defenses filed on or about: May 4, 2005.

Respondents Prudential and Borek did not file executed Uniform Submission Agreements.

Respondents' Motion to Dismiss Counts I, II and III of the Amended Statement of Claim filed on or about: October 5, 2005.

**CASE SUMMARY**

With respect to Respondent Prudential, Claimant specifically asserted the following causes of action: 1) violation of §448.102, Florida Statutes (Florida Whistle Blower); 2) breach of contract; and, 3) recovery of unpaid wages/commissions. Additionally, Claimant asserted a claim for libel and defamation against Respondents Prudential and Borek. The causes of action relate to Claimant's former employment with Respondent

Prudential and the Managing Director Agreement dated August 28, 2000, entered into between Claimant and Respondent Prudential.

Unless specifically admitted in their Answer, as amended, Respondents denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$1,000,000.00; 2) attorneys' fees; 3) costs; 4) interest and, 5) such other and further relief as the undersigned arbitrators (the "Panel") deem appropriate.

Respondents requested: 1) a dismissal of the Statement of Claim, as amended, in its entirety; 2) costs and disbursements, including attorneys' fees; and, 3) such other and further relief as the Panel deems just and proper.

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

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Claimant initially filed this claim against Respondent Prudential. On or about March 15 2005, the Panel issued an order which amongst other things stated that should the state court require the parties to arbitrate with respect to another respondent associated with this case, Claimant shall amend the claim to include that respondent. Pursuant to the Panel's Order, Claimant amended his Statement of Claim to include Respondent Borek.

Respondents moved the Panel for an Order dismissing Count I (Whistleblower); Count II (Breach of Contract); and, Count III (Wage Payment Claim) of the Amended Statement of Claim on the bases that Claimant asserted no legally cognizable claim against Respondents. Respondents further stated that Claimant's claim of defamation lacked factual and legal merit. Claimant did not file a response to this Motion. On or about November 23, 2005, the Panel entered an order which deferred its ruling on Respondents' Motion to Dismiss Counts I, II & III of the Amended Statement of Claim until the final hearings.

During the evidentiary hearing on or about August 23, 2006, Respondents renewed their Motion to Dismiss Counts I, II & III of the Amended Statement of Claim to which Claimant objected. The Panel granted Respondents' Motion to Dismiss Claimant's claims of breach of contract and wages related thereto. After Claimant presented his evidence and rested his case, Respondents asserted an ore tenus Motion for Summary Judgment on the remaining claims to which Claimant objected. After hearing arguments of counsel and providing counsel the opportunity to make additional motions, the Panel granted the Motion as to the remaining counts.

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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety and dismissed, with prejudice.
2. Any and all claims for relief not specifically addressed herein, including the parties respective requests for attorneys' fees and Claimant's claims for relief pursuant to §448.08, Florida Statutes, are denied.

### **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	= \$375.00
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#### **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. Accordingly, Respondent Prudential is a party and was a member firm.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 26 – 28, 2005, adjournment requested by Claimant	= \$1,200.00
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The Panel assessed \$600.00 of the adjournment fee to Respondent Prudential.

The Panel assessed \$600.00 of the adjournment fee to the Claimant.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: March 15, 2005 1 session	
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearing Dates: May 8, 2006 2 sessions	
August 21, 2006 2 sessions	
August 22, 2006 2 sessions	
August 23, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$10,800.00

The Panel has assessed \$6,000.00 of the forum fees to Claimant.  
The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Respondents.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,975.00
Less payments	= \$ 2,175.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

Respondent Prudential is solely liable for:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 600.00
<u>Total Fees</u>	<u>= \$ 7,600.00</u>
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Prudential and Borek are jointly and severally liable for:

Forum Fees	= \$ 4,800.00
<u>Total Fees</u>	<u>= \$ 4,800.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,800.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>Frances D. Sheehy, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Paul E. Morgan</i>	-	<i>Public Arbitrator</i>
<i>Richard H. Schneider</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/	08/25/06
<u>Frances D. Sheehy, Esq.</u> Public Arbitrator, Presiding Chairperson	<u>Signature Date</u>
/s/	08/25/06
<u>Paul E. Morgan</u> Public Arbitrator	<u>Signature Date</u>
/s/	08/25/06
<u>Richard H. Schneider</u> Non-Public Arbitrator	<u>Signature Date</u>

August 25, 2006

Date of Service (For NASD Dispute Resolution office use only)

Respondent Prudential is solely liable for:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Prudential and Borek are jointly and severally liable for:

Forum Fees	= \$ 4,800.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 0.00
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Paul E. Morgan  
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Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
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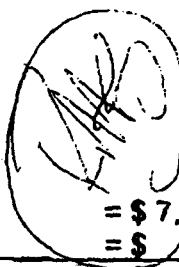
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NASD Dispute Resolution  
 Arbitration No. 04-01975  
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Respondent Prudential is solely liable for:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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