

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Pruco Securities, LLC, Prudential Insurance Company of America, and Prudential Insurance Brokerage, Inc. (Claimants) v. Bryan R. Ardite (Respondent)

Case Number: 05-04990

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Members and Non-Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimants Pruco Securities, LLC ("Pruco"), Prudential Insurance Company of America ("Prudential Insurance"), and Prudential Insurance Brokerage, Inc. ("Prudential Brokerage") hereinafter collectively referred to as "Claimants or Prudential": Jordan Becker, Esq., Paduano & Weintraub, LLP, New York, NY.

Respondent Bryan R. Ardite, referred to as "Respondent": Philip N. Muldoon, Esq., The Law Offices of Philip N. Muldoon, Turnersville, NJ.

CASE INFORMATION

Statement of Claim filed on or about: September 22, 2005.

Answer to the Statement of Counterclaim filed by Claimants: September 7, 2006.

Claimants did not submit signed Uniform Submission Agreements.

Statement of Answer filed by Respondent on or about: November 7, 2005.

Statement of Counterclaim filed by Respondent on or about: August 2, 2006.

Respondent signed the Uniform Submission Agreement: August 2, 2006

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, misappropriation of trade secrets, breach of fiduciary duty, breach of duty of loyalty, intentional interference with actual and prospective economic advantages, negligent interference with actual and prospective economic advantages, conversion, and unfair competition.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim.

In his counterclaim, Respondent asserted the following causes of action: breach of contract; breach of the duty of good faith and fair dealing; fraud; intentional interference with contract; and racketeering.

Unless specifically admitted in their Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. A permanent injunction requiring Respondent and all those acting in concert with him to return all records and documents in whatever form (whether original, copied, computerized or handwritten) containing the names, addresses, and telephone numbers of customers, employees and associated persons of Prudential, PRUPAC-NJ, and/or any affiliate of Prudential or PRUPAC-NJ, and the financial information of customers of Prudential, PRUPAC-NJ, and/or any affiliate of Prudential or PRUPAC-NJ, to Prudential or its counsel and purge such computerized materials and all documents and information derived therefrom from Respondent's possession, custody and control.
2. A permanent injunction restraining Respondent and all those acting in concern with him from:
 - a. Using, disclosing or transmitting for any purpose any confidential or proprietary information belonging to Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or which Prudential, and/or any affiliate of Prudential is obligated to protect, including but not limited to the names, addresses, and telephone numbers of customers and their financial information;
 - b. Destroying any of the records or client information of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ; and
 - c. Soliciting any business from, or initiating any contact with, any client whom Respondent served or whose name became known to him during the course of his association with Prudential, or causing, assisting or inducing any client or contractholder of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or any person whose name became known to Respondent during the course of his association with Prudential, to discontinue, terminate or withdraw values from any policy, annuity, contract, service or product of any kind of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or any policy sold by Prudential and/or any affiliate of Prudential or PRUPAC-NJ, or to purchase services or products that compete,

directly or indirectly, with those sold or serviced by Prudential and/or any affiliate of Prudential.

3. Compensatory damages on all claims as allowed by law;
4. Attorneys' fees and costs as allowed by law; and
5. All other relief as is deemed just and proper.

Respondent requested that the Claimants' claims and prayers for relief be denied and dismissed and that he be awarded appropriate attorneys' fees and costs associated with the defense of said claims.

In his counterclaim, Respondent requested unspecified compensatory damages (such sums as would reasonably and properly compensate him in accordance with the laws of the State of New Jersey), punitive damages, treble damages pursuant to N.J.S.A. 2C:41-4c; ordering the dissolution of Prudential pursuant to N.J.S.A. 2C:41-4a3; costs of suit, interest, attorneys' fees, and such other relief as the Panel may deem equitable and just.

Claimants requested that the Panel dismiss the Statement of Counterclaim in its entirety, on the merits, and with prejudice; and award them costs and attorneys' fees, along with such other and further relief as the Panel may find to be just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants Pruco and Prudential Insurance did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having submitted the claim, answered the counter-claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Claimant Prudential Brokerage did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but having submitted the claim, answered the counter-claim, appeared and testified at the hearing, is bound by the determination of the 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.

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. Claimants' monetary claims are denied in their entirety.
2. Claimants are jointly and severally liable for and shall pay Respondent the "10 week commission roll" for all products sold/renewed prior to July 27, 2005 in the amount of \$10,473.72.
3. Respondent shall provide a Statement under Oath to the Claimants that all documents under his custody and/or control and covered by Section 6 of the High Point and Homesite Authorized Broker Agreements, and Section 6 of the Statutory Agent Agreement have been returned to Claimants.
4. Pursuant to Rule 10335, The Prudential Insurance Company of America, Pruco Securities, LLC and Prudential Insurance Brokerage, Incorporated are granted injunctive relief until June 27, 2007 enjoining Respondent and all those acting in concert with him from:
 - a. Using, disclosing or transmitting for any purpose any confidential or proprietary information belonging to Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or which Prudential, and/or any affiliate of Prudential is obligated to protect, including but not limited to the names, addresses, and telephone numbers of customers and their financial information;
 - b. Destroying any of the records or client information of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ; and
 - c. Soliciting any business from, or initiating any contact with, any client whom Respondent served or whose name became known to him during the course of his association with Prudential, or causing, assisting or inducing any client or contractholder of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or any person whose name became known to Respondent during the course of his association with Prudential, to discontinue, terminate or withdraw values from any policy, annuity, contract, service or product of any kind of Prudential, PRUPAC-NJ and/or any affiliate of Prudential or PRUPAC-NJ, or any policy sold by Prudential and/or any affiliate of Prudential or PRUPAC-NJ, or to purchase services or products that compete, directly or indirectly, with those sold or serviced by Prudential and/or any affiliate of Prudential.
5. Any and all relief not specifically addressed herein, including punitive and treble damages, is 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	= \$500.00
Counter claim filing fee	= \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Pruco Securities, LLC and Prudential Insurance Company of America are parties.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 11, 2005 adjournment requested by Respondent	= \$1,000.00
April 24-28, 2006 adjournment requested by Respondent	= \$1,500.00
August 7-11, 2006 adjournment requested by Respondent	= \$1,500.00

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.

1. Claimants PRUCO, Prudential Insurance, and Prudential Brokerage are jointly and severally assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 312.50

2. Respondent Ardite is assessed:

Additional arbitrator honoraria	= \$ 312.50
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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) Decision on discovery-related motion on the papers
with (1)one arbitrator @ \$200.00 = \$ 200.00

Claimants submitted one (1) discovery-related motion

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: September 18, 2006 1 session

Four (4) Pre-hearing sessions with Panel @ \$1,000.00 = \$ 4,000.00
Pre-hearing conferences: October 11, 2005 1 session
May 25, 2006 2 sessions
August 2, 2006 1 session

Ten (10) Hearing sessions @ \$1,000.00 = \$10,000.00
Hearing Dates: October 25, 2005 2 sessions
October 10, 2006 2 sessions
October 11, 2006 2 sessions
October 12, 2006 2 sessions
October 13, 2006 2 sessions

Total Forum Fees = \$14,650.00

1. The Panel has assessed \$7,325.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$7,325.00 of the forum fees against Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants requested copy of hearing tape = \$ 15.00

Fee Summary

1. Claimants Pruco, Prudential Insurance, and Prudential Brokerage are jointly and severally liable for:

Initial filing Fee = \$ 500.00
Forum Fees = \$ 7,325.00

Administrative Costs	= \$ 15.00
<u>Injunctive Relief Fees</u>	= \$ 2,812.50
Total Fees	= \$10,652.50
<u>Less payments</u>	= \$ 4,015.00
Balance Due NASD Dispute Resolution	= \$ 6,637.50

2. Respondent is solely liable for:

Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 4,000.00
Injunctive Relief Fees	= \$ 312.50
<u>Forum Fees</u>	= \$ 7,325.00
Total Fees	= \$11,887.50
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$10,637.50

3. Claimant Pruco is solely liable for:

<u>Member Fees</u>	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Claimant Prudential Insurance is solely liable for:

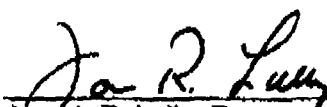
<u>Member Fees</u>	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,450.00

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

ARBITRATION PANEL

Joseph R. Lally, Esq.	-	Public Arbitrator, Presiding Chairperson
Bernard Herman	-	Public Arbitrator
John T. Hausladen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Joseph R. Lally, Esq.
Public Arbitrator, Presiding Chairperson

11/28/06

Signature Date

Bernard Herman
Public Arbitrator

Signature Date

John T. Hausladen
Non-Public Arbitrator

Signature Date

December 1, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Joseph R. Lally, Esq.	-	Public Arbitrator, Presiding Chairperson
Bernard Herman	-	Public Arbitrator
John T. Hausladen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph R. Lally, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Bernard Herman
Public Arbitrator

Nov. 29, 2006

Signature Date

John T. Hausladen
Non-Public Arbitrator

Signature Date

December 1, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Joseph R. Lally, Esq.	-	Public Arbitrator, Presiding Chairperson
Bernard Herman	-	Public Arbitrator
John T. Hausladen	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Joseph R. Lally, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Bernard Herman
Public Arbitrator

Signature Date



John T. Hausladen
Non-Public Arbitrator



Signature Date

December 1, 2006
Date of Service (For NASD Dispute Resolution use only)