



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Mark D. Schwartz

90-03435

Name of Respondents

Prudential Securities Inc  
John C. Glidden  
Gerald P. McBride  
Stephen Olsen

REPRESENTATION

For Mark D. Schwartz ("Claimant"): David A. Gradwohl, Esq. of Pelino & Lentz, P.C.

For Prudential Securities, Inc. f/n/a/ Prudential-Bache Securities, Inc., John C. Glidden, Gerald P. McBride, and Stephen Olsen ("Respondents"): Thomas H. Lee, II of Dechert Price & Rhoads.

CASE INFORMATION

By Stipulation and Order filed on October 22, 1990 in the U.S. District Court for the Eastern District of Pennsylvania it was Stipulated and Agreed by the parties in Civil Action No. 90-3096 captioned Mark D. Schwartz vs. Prudential-Bache Securities, Inc. et al., that all claims would be submitted to Arbitration.

Statement of Claim filed: December 5, 1990.

Claimant's Submission Agreement signed on: November 16, 1990.

Joint Statement of Answer filed by Respondents on: April 15, 1991.

Respondent Prudential Securities Inc.'s ("Prudential") Submission Agreement signed on: April 18, 1991.

Respondent John C. Glidden's ("Glidden") Submission Agreement signed on: April 18, 1991.

Respondent Gerald P. McBride's ("McBride") Submission Agreement signed on: April 18, 1991.

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Respondent Stephen Olsen's Submission Agreement signed on: April 18, 1991.

#### HEARING INFORMATION

Hearing Dates/Sessions: September 12, 1991 - two sessions  
September 13, 1991 - two sessions  
November 21, 1991 - two sessions  
November 22, 1991 - two sessions  
January 30, 1992 - two sessions  
January 31, 1992 - two sessions  
April 13, 1992 - two sessions  
Total Hearing Sessions = 14 sessions

Hearing Location: Philadelphia, Pennsylvania

#### CASE SUMMARY

Claimant accepted employment with Prudential which was formalized in a written employment agreement on or about May 30, 1986. The duration of the employment agreement between Claimant and Prudential was for 3 years from the effective date of July 1, 1986. Claimant alleged that during his employment at Prudential, he performed his duties with diligence and skill and that his success was limited only by the resources given to him. Claimant alleged that McBride had always provided Claimant with excellent employee evaluations. Claimant alleged that Glidden made defamatory statements to employees of Prudential about Claimant's fitness to conduct business. Claimant alleged that through the defamatory statement of Glidden, that Prudential defamed Claimant causing Claimant to sustain damage to his reputation. Claimant alleged that Prudential breached an oral agreement with Claimant by terminating his employment. Claimant alleged that Prudential, Glidden and McBride wrongfully discharged him in retaliation for his reports of alleged illegal political fund raising, for Claimant's refusal to destroy incriminating evidence and for his resignation from the Mmi-Pac. Claimant alleged a Civil RICO claim against Respondents and asserted that the Respondents, through the Public Finance Department of Prudential and the Mmi-Pac, conspired to engage in extortion and illegal political fund raising activity. Claimant alleged that Prudential, McBride and Glidden discharged Claimant in retaliation for Claimant's threatening to disclose activities that allegedly violated the law and for Claimant's refusing to participate in this unlawful activity.

Respondents individually and jointly denied each and every allegation asserted by the Claimant. Respondents maintained that there was no

defamation of Claimant by either Glidden or Prudential. Glidden and McBride maintained that they never made false or defamatory remarks about Claimant. Respondents maintained that statements made about Claimant were truthful evaluations of Claimant's abilities as an investment banker. Prudential and McBride maintained there was no breach of contract. McBride denied that there was any oral contract between Prudential and Claimant and that McBride never offered Claimant a new position or encouraged Claimant to move his family to New York. Respondents maintained there was no wrongful discharge. McBride maintained that the decision to not extend Claimant's employment was based solely on the expiration of Claimant's employment agreement and on McBride's decision that there was no place for Claimant in the reorganized department. Respondents maintained that there was no illegal fund raising. Respondents maintained that McBride never asked Claimant to destroy incriminating evidence. Respondents maintained that there was no conspiracy, extortion or illegal political fund raising and that Claimant's allegation of violations of Civil RICO is without merit and deficient. Respondents maintained that Claimant was not a victim of the alleged illegalities and therefore lacked standing to bring a Civil RICO claim. Respondents maintained there was no retaliatory discharge.

#### RELIEF REQUESTED

Claimant requested: Claim I - compensatory and punitive damages for defamation against Glidden in excess of \$100,000.00; Claim II - compensatory damages and punitive damages in excess of \$100,000.00; Claim III - compensatory and punitive damages for breach of contract against Prudential in excess of \$100,000.00; Claim IV - compensatory and punitive damages against Prudential, Glidden, and McBride for wrongful discharge in excess of \$100,000.00; Claim V - treble damages for the actual damages to be determined by the arbitrators for violation of RICO against all Respondents jointly and severally; Claim VI - damages in excess of \$100,000.00 against Prudential, Glidden and McBride for their retaliatory discharge including lost wages, benefits and other remuneration; plus costs, and attorneys' fees on Claimant's claims.

Respondents requested individually and jointly a dismissal of Claimant's claims in their entirety and award in favor of Respondents for their costs and attorneys' fees.

#### OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The panel has decided that Claimant's Motion to Strike all discussions regarding settlements is denied. The panel also decided that Respondents'

Motion to Strike "Rebuttal" testimony of Harriet Stanley is denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims for defamation against Prudential and Glidden are denied in their entirety.
2. Claimant's claim for breach of contract is denied in its entirety.
3. Claimant's claim for wrongful discharge is denied in its entirety; the panel finds there was no discharge wrongful or otherwise.
4. Claimant's claim for Civil RICO damages is denied on the basis that Claimant suffered no direct damages and therefore lacked standing to bring a Civil RICO claim against the Respondents. Because of Claimant's lack of standing, the Panel declines to address the RICO allegations.
5. Claimant's claim for retaliatory discharge is denied in its entirety.
6. Claimant's claims for punitive damages are denied in their entirety.
7. the parties respective claims for costs including attorneys' fees are denied in their entirety.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, Forum Fees are assessed equally between the Claimant and the Respondents jointly and severally. The costs per hearing session in this matter was \$750.00 and 14 hearing sessions were conducted over the course of seven hearing days so that the total amount that can be assessed as hearing sessions fees is \$10,500.00. This amount is split between the Claimant and the Respondents so that the Claimant is assessed \$5,250.00. Claimant is entitled to offset this amount with his previously deposited hearing session deposit of \$750.00 so that the amount due from the Claimant as his forum fees is \$4,500.00. Respondents are jointly and severally assessed forum fees in the amount of \$5,250.00.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature  
Name

Public/Industry

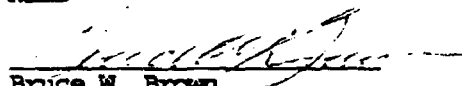
  
John J. O'Neill, Esq.

Executed on:

Date of Decision: 11/11/91

Date of Decision: May 11, 1992

Concurring Arbitrator's Signature  
Name

  
Bruce W. Brown

Public/Industry

Industry Arbitrator

Executed on:

~~Date of Decision:~~ April 17, 1992

Date of Decision: May 11, 1992

Concurring Arbitrator's Signature  
Name

H. Payson Brickley  
H. Payson Brickley

Public/Industry

Public Arbitrator

Executed on:

Date of Decision: May 2, 1992

Date of Decision: May 11, 1992