

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Gerard C. Fallon

93-01315

Name of Respondent(s)

Prudential Securities Inc
Gerald H. Ballan
Marc Dobin, Esq.

REPRESENTATION

For Claimant, Gerard Fallon ("Fallon"): Louis Tertocha, Esq. of the law office of Louis Tertocha, Miami, Florida.

For Respondents, Gerald Ballan ("Ballan"), Marc Dobin ("Dobin") and Prudential Securities, Inc. ("Prudential"): Sara Soto, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: April 1, 1993. Claimant's Submission Agreement signed on: February 19, 1993.

Statement of Answer filed by Respondents on: July 14, 1993.

Respondents' Submission Agreements signed on: September 8, 1994 by Dobin and Ballan, individually and on behalf of Prudential.

HEARING INFORMATION

On June 22, 1994 and September 1, 1994, prehearing conferences lasting a total of three sessions were conducted with a single arbitrator via telephone conference call.

On September 8 and 9, 1994, December 8 and 9, 1994 and December 7 and 8, 1995, hearings lasting eleven sessions were conducted in Ft. Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that Respondents, Prudential and Dobin, fraudulently looted the assets in his Retirement Accounts. Additionally, he alleges that Prudential, and Ballan's actions as manager, constituted a breach of fiduciary duty. Furthermore, it was alleged that all the Respondents fraudulently, deliberately, and unilaterally breached the Claimant's retirement account agreement, culminating in the looting and closing of the accounts and violating the Federal and Florida RICO statutes, as well as NYSE rules.

Respondents alleged that NYSE Rule 412 does not create a private right of action. Additionally, Prudential argued that their actions following the reversal of the erroneous transfer are not actionable. Some of the Respondents affirmative defenses were the following: waiver, comparative negligence, estoppel, statute of limitations, and the Economic Loss Rule.

RELIEF REQUESTED

Claimant requested: the current value of the securities and Money Market Funds, including dividends and interest accrued (\$150,000); punitive damages (\$750,000); sanctions, including suspension of Prudential's license to do business in Florida; that Prudential pays the IRS directly or, award Claimant the amount of income tax owed; all monies deposited in the retirement accounts plus interest; \$104,931.30 in fraud/RICO damages; treble damages; attorneys fees; and costs and disbursements of the Arbitration.

Respondents requested: dismissal of all claims in their entirety; all costs and attorneys fees incurred as a result in defending the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. 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.
2. During the course of the hearing in this matter, Claimant dismissed Respondent, Ballan. The panel directs that Mr. Ballan's CRD record be amended to reflect that. Mr. Ballan may contact CRD directly and advise them of the panel's ruling.

AWARD

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

1. Respondents are found not liable and, therefore, the claim against them is hereby dismissed.

2. Claimant's request for costs, attorney's fees, punitive damages and treble damages is denied.
3. Respondents' request for costs and attorney's fees is hereby denied.

OTHER COSTS

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.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$11,900.00 (11 regular sessions with the full panel x \$1,000.00 per session plus two prehearing conferences (one which lasted two sessions on June 24, 1994 and one which lasted one session on September 1, 1994) with a single arbitrator x \$300.00 per session).

Claimant is hereby assessed \$5,950.00 for which the NASD shall retain the \$1,000.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due the NASD of \$4,950.00.

Respondents are hereby assessed \$5,950.00 (jointly and severally) which shall be paid directly to the National Association of Securities Dealers, Inc.

The NASD shall retain the \$250.00 nonrefundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

/s/
Stuart I. Stern

Public/Chairman

/s/
George D. Lambert, III

Industry

/s/
Amy D. Dickinson

Public

Date of Decision: