

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Harold Jandreski.

Claimant.

v.

Case Number 93-01331

Prudential Securities, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Harold Jandreski ("Claimant") appeared pro se. Claimant was previously represented by Morgan W. Bentley, Esq. of Newark, New Jersey and Jeffry M. Bauer, Esq. of Gross Pointe, Michigan.

Respondent Prudential Securities, Inc. ("PSI") was represented by Ronald E. Reynolds, Esq. and Dennis K. Egan, Esq. of Butzel Long located in Birmingham, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about July 6, 1993.

Claimant's Submission Agreement was signed on June 22, 1993.

The Statement of Answer was filed on or about October 22, 1993.

Respondent PSI did not file a properly executed Submission Agreement.

HEARING INFORMATION

The hearing was held on: June 27, 1994 for two (2) sessions; June 28, 1994 for one (1) session; October 1, 1997 for one (1) session; November 3, 1997 for two (2) sessions; November 5, 1997 for two (2) sessions; and November 13, 1997 for two (2) sessions.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant was a branch manager of the Flint, Michigan branch office of PSI. Claimant alleged that he was abruptly confronted by his supervisor, the regional manager, and asked to resign as manager, without reason or explanation. Claimant contended that he was asked to resign because of his age (i.e. 51 years old) and to permit PSI to replace him with a younger manager under 40. Claimant asserted that he stepped aside as branch manager and became a producer after being promised a one year guaranteed salary of \$60,000, a 60% payout and accrued bonus. Claimant maintained that he was subsequently terminated by PSI for no stated reason although he was making diligent efforts to rebuild his "book of business." Claimant alleged that, as of his termination, Claimant was entitled to 5 more months on his guaranteed salary or \$25,000 and was entitled to his accrued bonus from the prior year of at least \$14,000. Claimant also contended that PSI filed a wrongful and misleading Form U-5 which has defamed him and damaged his business. Claimant further maintained that PSI wrongfully encouraged him to push direct investment and proprietary products which PSI knew to be improper, unsuitable and misrepresented in its sales material and literature. Claimant asserted various claims, including: age discrimination; breach of employment contract; fraud in the inducement / misrepresentation / omission / breach of NASD and NYSE rules; fraud, fraudulent concealment, defamation and damage to business reputation; and negligence / gross negligence.

Respondent PSI denied all liability to Claimant in its Statement of Answer. PSI alleged that Claimant had performance and behavior deficiencies including excessive consumption of alcohol on a regular basis. PSI contended that Claimant often came into the office late and regularly took long lunches during which he consumed much alcohol. PSI asserted that, not only was Claimant not in the office to perform his managerial duties, but when he would return to the office, he would exhibit irrational and inappropriate behavior. PSI maintained that, after Claimant returned from lunch, Claimant would often continue to consume alcohol in the office. PSI alleged that the

Flint, Michigan branch office production began to decline and that this drop in branch productivity was a poor reflection on Claimant's management ability. PSI contended that, since Claimant's performance and behavior did not improve and branch production was declining, he was asked to step aside as branch manager and offered the opportunity to become a broker. PSI asserted that, once Claimant became a broker, he showed little effort at producing commissions and began a campaign to disrupt the office. PSI maintained that, at one time, Claimant made inappropriate sexual remarks and gestures to a female broker. PSI alleged that Claimant was subsequently terminated because his production and behavior failed to improve.

RELIEF REQUESTED

Claimant requested an award consisting of: (1) \$25,000 remaining on Claimant's guaranteed salary, plus his accrued managers bonus of at least \$14,000; (2) at least \$200,000 for age discrimination and violating Claimant's civil rights; (3) at least \$200,000 for damages to Claimant's business reputation, defamation, fraud, physical and emotional distress, breach of contract, negligence, and for PSI's marketing of unsuitable direct investments; (4) forum fees; (5) attorney fees and costs; and (6) punitive damages.

Respondent PSI requested that the Statement of Claim be dismissed in its entirety with prejudice, along with costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent PSI did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure ("Code") and having answered the claim and appeared 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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

- (1) That Respondent Prudential Securities, Inc. is liable for and shall pay to Claimant Harold Jandreski the amount of Thirty Three Thousand Five Hundred Dollars and No Cents (\$33,500.00);
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
- (3) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each hearing session before a single arbitrator. There were ten (10) hearing sessions before the full panel x \$750 = \$7,500 in forum fees. Total forum fees = \$7,500. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$3,000 (½ total forum fees - hearing session deposit).

Pursuant to §10332(c) of the Code, Respondent PSI is liable for and shall pay forum fees in the amount of \$3,750 (½ total forum fees).

Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay postponement fees in the amount of \$750.

Pursuant to §10332(c) of the Code, Respondent PSI is liable for and shall pay postponement fees in the amount of \$750.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ Gregg M. Rzepczynski, Esq.
Gregg M. Rzepczynski, Esq.
Chairperson
Industry Arbitrator

December 4, 1997
Dated:

\s\ Bruce F. Coleman
Bruce F. Coleman
Panelist
Industry Arbitrator

December 4, 1997
Dated:

\s\ Eugene F. Leich
Eugene F. Leich
Panelist
Industry Arbitrator

December 2, 1997
Dated:

For NASD Regulation use only:

Date award served on the parties: December 5, 1997