

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Brian J. Clark

93-02612

Name of Respondents

The Prudential Insurance Co. of America  
George Brown

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**REPRESENTATION**

For Claimant Brian J. Clark ("Claimant") appeared Benjamin D. Liebowitz, Esq., Edison, New Jersey.

For Respondents Prudential Securities, Inc. ("Prudential") and George Brown ("Brown") appeared Charles A. Reid, III, Esq. with the law firm Shanley & Fisher, Morristown, New Jersey.

**CASE INFORMATION**

The Statement of Claim was filed on July 1, 1993.

Claimant's Submission Agreement was executed on July 17, 1993.

A Joint Statement of Answer was filed by Respondents Prudential and Brown on October 8, 1993. A Submission Agreement was executed on behalf of Prudential Securities, Inc. on November 3, 1993. Respondent Brown's Submission Agreement was executed on March 17, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference:	June 8, 1994	-	One Session
Hearing Dates/Sessions:	January 25, 1995	-	Two Sessions
	January 26, 1995	-	Two Sessions
	June 13, 1995	-	Two Sessions
	June 14, 1995	-	Two Sessions
	August 21, 1995	-	Two Sessions
	August 22, 1995	-	Two Sessions
	September 27, 1995	-	Two Sessions

The hearings were held at the National Association of Securities Dealers, Inc. offices located in New York City, New York.

## CASE SUMMARY

Claimant alleged that on or about October 20, 1986 he commenced employment with Respondent Prudential at its Metuchen district office. During his first year of employment Claimant was allegedly the number one producer of insurance policies placed in his district and the winner of the company's silver achievement award. Claimant was then promoted in 1988 to a sales manager position in the Metuchen district office. It was further alleged that between 1988 and 1991, claimant received sales performance citations from Respondent Prudential due to his superior sales performance in the company. Further, Claimant alleged that Respondent Brown became the District Manager in or about the summer of 1991 following his demotion by Prudential from a position as a regional vice president. Respondent Brown was allegedly bitter about his demotion and made disparaging and malicious remarks about claimant and made demands on claimant in bad faith and designed to prejudice claimant with respondent Prudential.

In or about February, 1992, Claimant was allegedly transferred to respondent Prudential's New Brunswick office at claimant's request. Shortly thereafter, claimant was informed by respondent that he had been accused of having engaged in unethical business practices, including churning and a kickback scheme. Claimant alleged that respondent breached its duty to Claimant by wrongfully terminating him based on allegations that were false and for intentionally, wilfully and knowingly sending malicious and defamatory remarks about claimant to the Securities & Exchange Commission.

Thereafter, by letter dated June 25, 1992, Respondent Prudential terminated claimant's employment with it. Claimant alleged that at the time of his termination, claimant was or should have been entitled to receive certain commissions, reimbursements, benefits and payments, which respondent has failed and refused to pay despite claimant's demand for same. It was alleged that respondents failure to pay claimant the monies owed is in breach of its agreement with claimant and as a result respondent Prudential has been unjustly enriched.

Respondents Prudential and Brown maintained that on January 31, 1992 claimant was transferred to Prudential's New Brunswick district office. Following his transfer from the Metuchen District office, Claimant's former district manager, respondent Brown advised his superior that several agents on claimant's former staff had lodged complaints alleging serious misconduct by claimant. Respondents undertook an in-depth investigation into Claimant's activities as sales manager in the Metuchen district office which included interviews of Clark and the complaining agents, as well as written statements from the agents. Respondents contended that their investigation substantiated the complaints and revealed serious misconduct by claimant. Allegedly, based upon on the results of its investigation Prudential terminated Claimant.

Respondents further maintained that shortly after claimant's termination, claimant wrote to Prudential requesting payment of certain commissions as well as reimbursements he alleged were owed in the amount of \$3,696.78. Respondents responded to claimant's letters advising him that he was only entitled to unused vacation pay and holiday pay and forwarded a check representing these sums. Respondents maintained that claimant actually owed respondent \$1,978.40 representing funds advanced to claimant for his planned attendance at a company conference which claimant did not attend due to his termination.

Respondents maintained that Claimant's claims fail under the doctrines of unclean hands, waiver and estoppel because claimant breached his duties of loyalty and honesty. Further, Respondents maintained that Claimant was an at-will employee subject to termination at anytime for any reason and that Prudential had a qualified privilege to report its reasons for claimant's termination on the Form U-5. Respondents denied that Claimant's reputation was defamed or that they intentionally or negligently caused claimant to suffer emotional distress.

### **RELIEF REQUESTED**

Claimant requested an award against Respondents Prudential and Brown in his favor for compensatory, consequential and punitive damages, interest, costs of suit, reasonable attorney fees, and such other relief as may be appropriate.

Respondents requested that claimant's statement of claim be dismissed.

### **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.

### **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. All claims asserted against Respondents The Prudential Insurance Co. of America and George Brown be and hereby are dismissed with prejudice.
2. Claimant's claim for punitive damages be and hereby is denied.
3. Claimant's claim for attorney's fees be and hereby is denied.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 pre-hearing conference x \$300.00 = \$300.00

14 sessions X \$400 = \$5,600.00 minus hearing session deposit of 400 = \$5,200

Total = \$5,500.00

Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,750.00 representing one-half of the forum fees assessed against the parties.

Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2,750.00 representing one-half of the forum fees assessed against the parties.

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

Concurring Arbitrators' Signatures  
Name

A. James Jacoby

James Noone  
Public Arbitrator

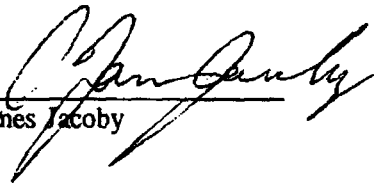
Efren Cleofe  
Industry Arbitrator

I, Efren Cleofe, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Efren Cleofe

NASD Date of Decision: January 8, 1996

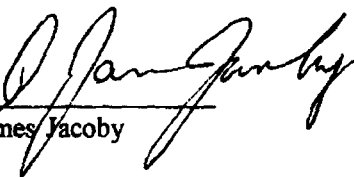
Concurring Arbitrators' Signatures  
Name

  
A. James Jacoby

\_\_\_\_\_  
James Noone  
Public Arbitrator

\_\_\_\_\_  
Efren Cleofe  
Industry Arbitrator


I, A. James Jacoby, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
A. James Jacoby

NASD Date of Decision: January 8, 1996

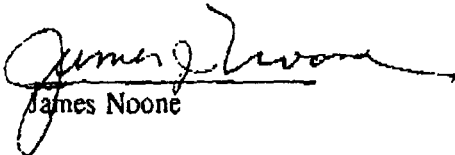
Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
A. James Jacoby

X   
James Noone  
Public Arbitrator

\_\_\_\_\_  
Efren Cleofe  
Industry Arbitrator

I, James Noone, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter

\_\_\_\_\_  
  
James Noone

NASD Date of Decision: January 8, 1996