

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities Inc

94-01534 (consolidated with 94-02689)

Name of Respondents

Scott M. Zimmerman
David B. Kusiel

REPRESENTATION

For Claimant Prudential Securities Inc: G. Wayne Hillis, Esq. of the law firm of Parker, Hudson, Rainer & Dobbs, Atlanta, GA.

For Respondents Scott M. Zimmerman and David B. Kusiel: John E. Norris, Esq. of the law firm of Burr & Forman, Birmingham, AL.

CASE INFORMATION

Statements of Claim filed on April 25, 1994 in NASD Arbitration Number 94-01534 and July 13, 1994 in NASD Arbitration Number 94-02689.

Claimant's Submission Agreement signed on: April 22, 1994 in NASD Arbitration number 94-01534 and July 7, 1994 in NASD Arbitration Number 94-02689.

Reply to Counterclaim dated November 16, 1994.

Statement of Answer and Counterclaim filed by Respondent Scott M. Zimmerman on September 27, 1994.

Respondent Scott M. Zimmerman's Submission Agreement signed on: August 31, 1994.

Statement of Answer and Counterclaim filed by Respondent David B. Kusiel on October 18, 1994.

Respondent David B. Kusiel's Submission Agreement signed on: October 14, 1994.

HEARING INFORMATION

Pre-Hearing Conferences: August 25, 1995-One Session
 August 31, 1995-One Session
 January 23, 1996-One Session

Hearing Dates/Sessions: April 3, 1996-Two Sessions
 April 4, 1996-Two Sessions
 April 5, 1996-Two Sessions

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged that on or about February 21, 1992 Prudential Securities Inc. advanced to Respondent Scott M. Zimmerman the sum of \$68,576.00 and on or about November 8, 1991 it advanced to Respondent David B. Kusiell the sum of \$96,519.00 and that each Respondent signed a Promissory Note to Prudential Securities Inc. for the above amounts. Claimant further alleged that the terms of the Notes provided that Respondent Scott Zimmerman was to repay his indebtedness in four equal annual installments of \$17,144.00 and Respondent David B. Kusiell was to repay his indebtedness in three equal annual installments of \$32,173.00, each loan with interest at 8% per annum, but that if Respondents' employment with Prudential Securities, Inc. was terminated for whatever reason, the note becomes immediately due and payable. Claimant further alleged that under the Employment Agreement, Prudential Securities Inc. was obligated to pay transitional compensation to Respondent Zimmerman in the amount of \$96,519.00 and to Respondent Kusiell in the amount of \$32,173.00 plus additional compensation on each installment date equal to 8% of the total transitional compensation less the amount of any installments already paid. Claimant also alleged that on February 11, 1994 Respondent David B. Kusiell resigned from Prudential Securities Inc. owing a balance of \$32,173.00 with interest and that on March 5, 1994 Respondent Scott Zimmerman also resigned from Prudential Securities owing a balance of \$51,432.00 plus interest, both notes which became due and payable.

Respondents maintained that the Employment Agreement obligates Prudential Securities Inc. to pay transitional compensation of \$68,576.00 to Scott Zimmerman in four equal annual installments and \$96,519.00 to David B. Kusiell in three equal installments, plus interest at the rate of 8% per annum on the unpaid principal balance and provides that if Prudential Securities Inc. terminates the Respondents without cause, the balance becomes due and payable in full. Respondents also maintained that Prudential Securities Inc. breached the terms of the Employment Agreement and that on February 1, 1994, Prudential Securities Inc. terminated Respondent Scott Zimmerman without cause whereby the balance of the transitional compensation became due and payable to both Respondents.

Respondents asserted a counterclaim maintaining that based on assurances from Prudential Securities Inc. that the controversy surrounding its sales of certain limited partnership interests was over and that they would be supplied with the facilities and support staff necessary to carry out their duties, they left their former employment. Respondents next maintained that Prudential Securities Inc. failed to disclose material facts that it was under investigation by the SEC and that many lawsuits and arbitration proceedings were still pending. Respondents further maintained that they relied on these

misrepresentations and omissions and took actions based upon them. Respondents also maintained that based on Prudential Securities Inc.'s omissions, they chose not to sell their holdings in Spectrum Information Technologies ("SPCL") and advised their customers to do the same, and that decision caused Respondents and their customers to suffer substantial losses. Respondents next maintained that Prudential Securities Inc. breached their Employment Agreements by failing to pay the full unpaid balance of the transitional compensation due under the Agreement to Scott Zimmerman in the amount of \$51,432.00 and to David B. Kusiel in the amount of \$32,173.00, plus interest at the rate of 8% per annum. Respondents further maintained that because of Prudential Securities Inc.'s misrepresentations and omissions, they have suffered a loss of reputation, lost accounts and commissions and are thereby entitled to punitive damages.

In response to the counterclaim, the Claimant maintained that it denies Prudential Securities Inc. made any material misrepresentations to Respondents either before or during their employment. Claimant next maintained that Respondents held their positions in SPCL on the basis of their own professional judgment. Claimant also maintained that the allegations of misconduct regarding Prudential Securities Inc.'s legal and regulatory problems pre-dated Respondents by nearly nine years and were of public record. Claimant next maintained that the Respondents have failed to deny that they are in default of their loans. Claimant further maintained that Respondents are not entitled to any amounts under the agreement because they resigned from Prudential Securities Inc. Claimant also maintained that Respondents' request for punitive damages has no basis in law or the NASD Procedure.

RELIEF REQUESTED

Claimant requested damages against Respondents Scott Zimmerman in the sum of \$51,432.00 and David B. Kusiel in the sum of \$32,173.00 both with interest at 8% per annum, together with reasonable attorney's fees, costs and NASD filing costs as expressly allowed for in the notes. Claimant further requested a dismissal of the counterclaim.

Respondents requested the following relief:

- (a) that Scott Zimmerman recover \$51,432.00 plus interest for breach of his employment agreement;
- (b) that David B. Kusiel recover \$32,173.00 plus interest for breach of his employment agreement;
- (c) that the panel award them \$100,000.00 each in punitive damages;
- (d) that the Panel award them attorney's fees and costs;
- (e) that all claims against the Respondents be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Respondents' counterclaim regarding omissions concerning the SPCL stock and the resulting losses was not heard.

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 confirmed copies 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. The Respondent Scott Zimmerman is hereby liable and shall pay to the Claimant Prudential Securities Inc. the sum of \$50,301.00 inclusive of interest.
2. The Respondent Scott Zimmerman is hereby liable and shall pay to the Claimant Prudential Securities the sum of \$10,000.00 representing attorney's fees and other costs of collection pursuant to the Promissory Note signed by the Respondent.
3. The Respondent David B. Kusiel is liable and shall pay to Claimant Prudential Securities Inc. the sum of \$37,321.00 inclusive of interest.
4. The Respondent David B. Kusiel is liable and shall pay to Claimant Prudential Securities Inc. the sum of \$10,000.00 representing attorney's fees and other costs of collection pursuant to the Promissory Note signed by the Respondent.
5. The counterclaims of Respondents Scott Zimmerman and David B. Kusiel are dismissed in their entirety.
6. The Respondents' request for punitive damages is denied.

FORUM FEES

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

3 Prehearing Sessions x \$300.00=	\$ 900.00
6 Hearing Sessions x \$750=	\$4,500.00
1 Postponement x \$600.00=	\$ 600.00

Total Fees	\$6,000.00

The arbitrators have decided that the Respondents shall pay the forum fees associated with the arbitration.


The Respondents are jointly and severally liable and shall pay to the NASD the sum of \$6,000.00 less the hearing session deposit (\$750.00)= net \$5,250.00 due.

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

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ARBITRATOR'S SIGNATURE

Louise B. Duffy, Esq.
Industry Arbitrator



P. Parks Duncan
Industry Arbitrator

Chesley V. Morton, Jr.
Industry Arbitrator

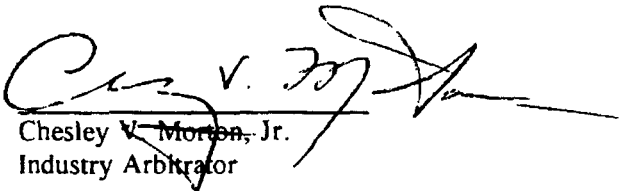
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