

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph Wilk

94-01645

Name of Respondent

Prudential Securities Inc

REPRESENTATION

For Claimant: Allan R. Freedman, Esq., New York, New York.

For Respondent: Kirsten Hotchkiss, Esq. of Prudential Securities Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed: May 2, 1994.

Claimant's Submission Agreement signed on: April 28, 1994.

Statement of Answer filed by Respondent Prudential Securities Inc. on: February 28, 1995.

Amended Statement of Answer filed by Respondent Prudential Securities Inc. on: April 11, 1995.

Respondent Prudential Securities Inc.'s Submission Agreement signed on: February 28, 1995.

HEARING INFORMATION

Hearing Dates / Sessions: April 12, 1995 / Two Sessions.
April 13, 1995 / Two Sessions.

Hearing Location: Offices of the National Association of Securities Dealers located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleged that Respondent sought to secure Claimant's services in its Fort Lee, NJ office and that Claimant had discussions with Respondent about the conditions under which he would move out of the employ of Dean Witter and consent to join Respondent. Claimant further alleged that in order to retain the clients he had cultivated while with Dean Witter he negotiated several concessions from Respondent. Claimant alleged that he and Respondent orally agreed that any fees that Claimant's clients would incur in transferring their accounts from Dean Witter to Respondent's mutual funds would be paid by Respondent and that Respondent agreed to provide Claimant's clients with a six month free Command Account. Claimant then alleged that as part of his agreement with Respondent he was to receive a 50% payout during his first 13 months of employment which began January 3, 1994 and that he was to receive a bonus of 10% if his production during the initial 13 month period exceeded \$200,000 and if he reached \$175,000 in the first 13 months he would receive a payout of 45% during the next 13 months and 37% thereafter. Claimant alleged that based upon the oral agreements reached that Claimant accepted Respondent's offer. Claimant further alleged that in early February he was advised by his superior at Respondent that Respondent would not repay to his clients the termination fees or other transfer fees and that Command Accounts would not be furnished free to his client. In addition, Claimant alleged that Respondent breached its oral agreement to provide incentives to Claimant's clients who transferred their accounts to Respondent.

Respondent maintained that Claimant's contract of employment precluded him from alleging a breach of promise regarding items not contained in the contract. Respondent maintained that Claimant executed a contract of employment with Respondent and that the contract contained no promise to Claimant that Respondent would cover the redemption fees for his clients' mutual funds or that Respondent would provide free Command Account Services to his clients for six months. Respondent further maintained that the only promises upon which Claimant was entitled to rely were those contained in the employment agreement and that there were no provisions in the employment agreement to assume client redemption fees or to pay the initial costs of their Command Accounts. Respondent maintained that with respect to the Command Accounts, Claimant was informed of the branch policy that if any customers were dissatisfied after with their Command Accounts after six months, their service fees would be reimbursed. Respondent further maintained that with respect to the fees, Claimant was informed that Respondent would pay the Automated Customer Account Transfer ("ACAT") fees associated with the transfer of their accounts and that Respondent probably could pay the ACAT and IRA back-end termination fees but not the Contingent Deferred Sales Charges ("CDSC"). In addition, Respondent maintained that Claimant was informed by Respondent that Claimant's clients could redeem their mutual funds within a specified period of time and repurchase Respondent's Class A shares at no additional cost. Respondent maintained that Claimant wanted Respondent to pay any and all Dean Witter redemption fees to convince his clients to move their accounts to Respondent and then advise them to purchase Class B Mutual Fund shares or other products. Respondent maintained that Claimant in effect wanted to pay his customers the amount he had otherwise received as commissions in order to induce them to liquidate their Dean Witter funds, and to

earn commissions on his clients' purchase of Respondents funds. Respondent maintained that such a payment would not be in the best interest of Claimant's clients and would be violation of NYSE Rule 353. Respondent additionally maintained that the alleged breach of promise was not the proximate cause of any damages.

RELIEF REQUESTED

Claimant requested:

1. Damages of approximately \$450,000.
2. Costs of Claimant's relocation to Florida from New Jersey.
3. Punitive damages.

Respondent requested:

1. That Claimant's claims be dismissed in their entirety.
2. Claimant's claim for punitive damages be struck by the panel on the grounds that under New York law, punitive damages are not to be awarded in arbitrations.

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. Respondent is liable and shall pay to Claimant the sum of \$38,333.
2. Claimant's claim for punitive damages is denied.
3. Each party shall bear its own respective costs and attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750 = net \$2,250 due.

Forum fees Assessed Against:

1. Respondent is assessed the sum of \$2,250 which represents the balance of forum fees due. Respondent is liable and shall pay to the NASD the sum of \$2,250.

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

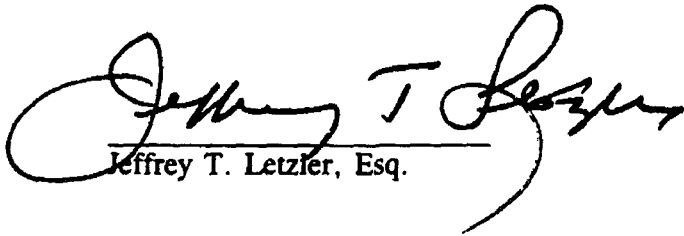
Page 5

NASD Award #94-01645

Concurring Arbitrators' Signatures

Name

Industry Chairperson



Jeffrey T. Letzler, Esq.

Name

Industry Panelist

Michael B. Milstein

Name

Industry Panelist

Richard S. Peskin, Esq.

Date of Decision: May 12, 1996

Page 6

NASD Award #94-01645

STATE OF: **NEW YORK**

SS:

COUNTY OF: **NEW YORK**

On this **8** day of **May**, 1995, before me personally appeared **Jeffrey T. Letzler, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Denise P. Stratton

DENISE P. STRATTON
Notary Public, State of New York
No. 01ST5018895
Qualified in Richmond County
Commission Expires October 12, 1998

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Michael B. Milstein** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Richard S. Peskin, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Page 5

NASD Award #94-01645

Concurring Arbitrators' Signatures

Name

Industry Chairperson

Jeffrey T. Letzler, Esq.

Name

Industry Panelist

Michael B. Milstein
Michael B. Milstein

Name

Industry Panelist

Richard S. Peskin, Esq.

Date of Decision: May 12, 1995

STATE OF:

SS:

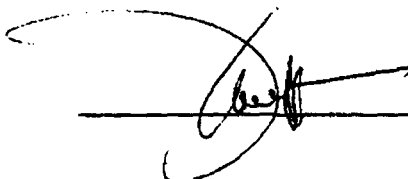
COUNTY OF:

On this day of , 1995, before me personally appeared Jeffrey T. Letzler, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *New York*
COUNTY OF: *Westchester*

SS:

On this *9* day of *May*, 1995, before me personally appeared Michael B. Milstein known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


JACK APPELBAUM
NOTARY PUBLIC STATE OF
N.Y. #0084435
QUALIFIED IN
WESTCHESTER COUNTY
COMMISSION EXPIRES *5/28/96*

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Richard S. Peskin, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Page 5

NASD Award #94-01645

Concurring Arbitrators' Signatures

Name

Industry Chairperson

Jeffrey T. Letzler, Esq.

Name

Industry Panelist

Michael B. Milstein

Name

Industry Panelist



Richard S. Peskin, Esq.

Date of Decision: May 12, 1995

Page 6

NASD Award #94-01645

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Jeffrey T. Letzler, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Michael B. Milstein known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Richard S. Peskin, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



Martin Fishman
Notary Public, State of New York
No. 1233960
Qualified in Nassau County
Commission Expires: August 31, 1995