

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**Name of Claimant**

David A. Sipp

Case No: 94-01700

**Name of Respondent**

Prudential Securities Incorporated

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**REPRESENTATION**

For Claimant: David A. Sipp ("Sipp") was represented by Timothy M. McDaniel, Esq. of McDaniel & Associates, located in Houston, Texas.

For Respondent: Prudential Securities Incorporated ("Prudential") was represented by David Sterling, Esq. of Baker & Botts, located in Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed: May 9, 1994.

Claimant's Submission Agreement signed on: May 4, 1994.

Statement of Answer and Counterclaim filed by Respondent on: July 8, 1994.

Respondent's Submission Agreement signed on: July 14, 1994 by John H. Bluher, First Vice President, Prudential Securities, Inc.

First Amended Answer to Statement of Claim filed: June 29, 1994.

Claimant's Reply to Answer and Counterclaim filed: July 21, 1994.

Claimant's Supplement to Statement of Claim filed at the hearing on March 13, 1995, which was unopposed by Respondent.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: March 13, 1995 for Two (2) sessions;  
March 14, 1995 for Two (2) sessions;  
March 15, 1995 for Two (2) sessions;  
March 16, 1995 for Two (2) sessions.  
April 5, 1994 for Two (2) sessions;  
April 6, 1994 for Two (2) sessions;  
April 7, 1994 for Two (2) sessions.

Hearing Location: Houston, Texas

### **CASE SUMMARY**

Claimant Sipp alleged that Respondent committed wrongful conduct in connection with termination of Sipp's employment with Prudential, Sipp specifically alleged that:

1. Sipp was employed by Prudential from November 15, 1993 thru April 22, 1994.
2. Sipp accepted employment based upon representations he could offer a limited partnership Kenmar Performance Partners ("Kenmar") to his clients.
3. Until a few days prior to his termination, Prudential approved Kenmar transactions made by Sipp during the term of his employment.
4. Prudential and the State of Texas entered into a consent agreement on January 18, 1994, which prohibited selling limited partnerships and Prudential did not tell Sipp he could not sell Kenmar securities but instead approved Kenmar sales.
5. Prudential then changed its mind and decided that Sipp's sales violated the consent order and on April 22, 1994, Prudential terminated Sipp for "failing to follow firm procedure" and engaged in a course of action to portray Sipp as a renegade broker who acted without the consent or knowledge of Prudential in the sale of Kenmar securities.

6. As a result of Prudential's actions, Sipp's reputation was forever damaged and he has been effectively barred from working in the securities industry.
7. Sipp claimed common law fraud, negligent misrepresentation, and defamation/false light/tortious interference.

Respondent Prudential denied the material allegations of the Statement of Claim, alleging that:

1. Sipp was a sophisticated and experienced financial advisor who was aware of Prudential/State of Texas Agreement of January 18, 1994, which prohibited Prudential from selling non-publicly offered limited partnerships for two years and chose to wire around the settlement by claiming that he had received approvals from various people in Prudential when in fact he had not.
2. Sipp was terminated because he tried to sell Kenmar securities in violation of the Texas settlement; he was less than candid with Prudential during his employment and untruthful as to his explanations regarding Kenmar and he demonstrated that he was not trustworthy.

Prudential specifically denied Sipp's allegations and

1. Denied making any fraudulent or negligent statements in connection with the employment of Sipp;
2. Denied giving Sipp approval or clearance to continue selling Kenmar securities or otherwise encourage him to continue selling Kenmar securities after the Texas settlement;
3. Denied terminating Sipp in order to cover up any wrongdoing on its part or to placate the State of Texas;
4. Denied that the U-5 filed on Sipp was in any way improper or malicious;
5. Denies committing fraud and denies it is liable for defamatory, false, light or tortious interference and denies that false light or tortious inference are applicable;
6. Asserts Sipp's damages are a result of his own conduct, are exaggerated and not the result of any Prudential conduct;

7. Denies liability for punitive damages.

Prudential asserts a Counterclaim against Sipp on a balance due under a Promissory Note, interest and attorneys fees.

Sipp requests that the Promissory Note be declared null and void.

### **RELIEF REQUESTED**

Claimant Sipp requested entry of an award against Prudential for damages between \$500,000.00 and \$5,000,000.00; a finder's fee of \$156,000.00; lost commissions of \$38,000.00; lost sales manager salary of \$12,000.00; general damages for defamatory statements, mental anguish damages, punitive damages, attorneys fee and costs.

In a supplemental claim, Sipp requests the Promissory Note to be held null and void and a directive relief to amend Sipp's U-5 to replace the YES answer on line 15 with a NO answer and the deletion of any potentially derogatory remarks and restated the out of pocket damages to exceed \$2,620,000.00.

Respondent Prudential requested judgment in its favor on Sipp's claims, judgment of \$79,456.00 on its Promissory Note, interest on the note at 6% to date of judgment, post judgment interest, and attorneys fees.

### **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. Respondent Prudential Securities Incorporated is liable for and shall pay to Claimant, David A. Sipp, the sum of \$271,000.00 as actual damages.

2. Respondent, Prudential Securities Incorporated, is hereby directed and ordered either to file with the NASD within 30 days of service of this award an Amended Form U-5, as set forth in subparagraph (a) below, or to pay additional damages as set forth in subparagraph (b) below, as follows:

(a). The language in Paragraph 7 on the May 20, 1994 U-5 Disclosure Reporting Page shall be deleted and the following language shall be substituted in Paragraph 7 of the Amended U-5.:

"Pursuant to the Award of the Panel of Arbitrators rendered on (enter date of award), 1995, In the Matter of Arbitration Between David A. Sipp, Claimant, and Prudential Securities Incorporated, Respondent, in order to clarify and conform the May 20, 1994, Form U-5 to the Arbitration Panel's findings, the language originally set forth in Paragraph 7 has been deleted."

The following language shall be set forth in Paragraph 9 of the Amended U-5 Disclosure Reporting Page:

"David A. Sipp transferred from Kemper Securities and became an F.A. with PSI on November 15, 1993, with the understanding that he would be permitted to offer for sale to his customers units of a certain commodity pool limited partnership ("the Partnership") which was offering units of limited partnership interests in a Regulation D private placement. This was an important factor in the F.A.'s decision to transfer to PSI. On January 4, 1994, a Selling and Continuing Service Agreement was entered into between PSI and the Partnership which permitted the F.A. and other PSI brokers to sell units of the Partnership. However, on January 18, 1994, PSI and the Texas State Securities Board entered into an agreement (the "Texas Agreement") that temporarily prohibited all PSI brokers from selling securities in Texas under the ULOE and ILOE exemptions. As a result of this agreement PSI brokers were not permitted to sell units of the Partnership to Texas customers as of January 18, 1994.

Prior to January 18, 1994, four of the F.A.'s customers had authorized the F.A. and PSI to purchase units of the Partnership, but the funds were transferred after January 18 to complete the transactions. In March another customer of the F.A. purchased

units of the Partnership, and a third-party custodian was used. While these transactions may have been violations of the Texas Agreement, they were authorized by PSI management and were not intentional or knowing violations of the Texas Agreement by anyone.

An investigation of these transactions was conducted by PSI. The F.A.'s Employment Agreement provided that the employment could be terminated by written or oral notice "for any reason whatsoever given by either party". Based upon all of the facts and circumstances, it was in the best interests of all concerned for the employment relationship between the F.A. and PSI to be terminated."

(b). If Respondent elects not to prepare and file the Amended U-5 with the NASD in accordance with the order of this Panel of Arbitrators set forth in paragraph 2(a) above, and only in that event, Respondent shall pay to Claimant as damages the sum of \$1,000,000.00, which shall be in addition to the damages set forth in paragraph 1 above.

3. The Claimant's request for punitive damages is denied.

4. The counterclaim of Respondent against Claimant is denied and Respondent shall recover nothing from Claimant.

5. All relief requested by either party not herein granted is denied.

6. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

### **FORUM FEES**

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed: Fourteen (14) hearing sessions x \$1,000.00 per hearing session = \$14,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and refund the \$1,000.00 hearing session deposit previously deposited by the Claimant, David A. Sipp. In addition, the NASD shall retain \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Respondent, Prudential Securities Incorporated. Respondent Prudential Securities Incorporated is liable for and shall pay to the NASD forum fees in the sum

of \$13,400.00, and the \$200.00 surcharge due pursuant to Section 45 of the NASD Code of Arbitration Procedure, for a total sum due the NASD of \$13,600.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Donald H. Fidler, Esq.  
Donald H. Fidler, Esq.  
Public Arbitrator  
Chairperson

June 6, 1995

/s/ Donald K. Eckhardt, Esq.  
Donald K. Eckhardt, Esq.  
Public Arbitrator

June 19, 1995

/s/ Thomas A. Thornhill  
Thomas A. Thornhill  
Industry Arbitrator

June 6, 1995

For NASD Use Only

Date Served: June 19, 1995