

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

94-01987

Name of Respondent

Jeffery Schimm

REPRESENTATION

Claimant Prudential Securities, Inc. ("PSI") was represented at the hearing by Chris Freeze, Esq. of PSI, of New York, New York.

Respondent Jeffery Schimm ("Schimm") appeared at the hearing pro se.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant PSI on May 26, 1994. The Uniform Submission Agreement was signed by Gary Klein, Vice President, on behalf of PSI on May 5, 1994.

The Statement of Answer was filed by Respondent Schimm on July 15, 1994. The Uniform Submission Agreement was signed by Schimm on July 12, 1994.

HEARING INFORMATION

The hearing was held on March 20, 1995, at the Omni Richmond Hotel in Richmond, Virginia for a total of two(2) hearing sessions.

CASE SUMMARY

Claimant PSI alleged in its Statement of Claim that on or about October 17, 1991, Respondent Schimm voluntarily entered into an employment agreement with PSI and executed a promissory note. PSI asserted that by the terms of the employment agreement and promissory note, PSI was obligated to pay Schimm transitional compensation in the amount of \$82,500 in three equal installments, and Schimm was obligated to pay \$82,500 plus interest at 8% per annum in three equal installments, on the 17th day of October, 1992, 1993, and 1994. PSI claimed that the employment agreement

provided that Schimm would not be entitled to any unearned transitional compensation should he resign or be terminated for cause prior to completing three years of employment. PSI stated that on or about November 13, 1993 Schimm executed a second promissory note whereby PSI loaned him the sum of \$9,818.18, which Schimm was obligated to repay in six equal monthly installments without interest beginning in December 1993 and ending in May 1994. PSI asserted that the second note provided that the loan would become immediately due and payable upon termination of Schimm's employment with PSI for whatever reason. PSI stated that on or about March 14, 1993 Schimm resigned. PSI alleged that Schimm is in default on the first promissory note in the sum of \$27,500, and in default on the second promissory note in the sum of \$4,909.20.

Respondent Schimm in his Answer alleged that he was effectively terminated by constructive discharge without cause. Respondent stated that in the fall of 1991, he was approached by PSI through a recruitment firm with the offer of a sales position in the Retail Institutional Financial Advisors ("RIFA") program at PSI. Respondent further stated that Eric B. Olsen ("Olsen"), an employee of Claimant PSI, recruited Respondent and made oral representations that Respondent would always remain employed by PSI in its Richmond, Virginia office, and that Respondent would remain in institutional fixed income sales. Respondent further stated that on October 17, 1991 he entered into an employment agreement with PSI, and that shortly thereafter Olsen explained to Schimm that due to certain commission pay-out differences and the nature of Schimm's smaller middle-market account base, Schimm would be better off as a regular Financial Advisor than as part of the RIFA program. Schimm stated that based on these representations, he followed Olsen's advice and did not enter the RIFA program. Respondent further stated that in late 1993 and early 1994, PSI streamlined the RIFA program, with the result that his not being a part of RIFA had some detrimental effects on his ability to service his existing accounts and to develop prospective accounts. Additionally, Schimm alleged that although the adequacy of his production level had never been questioned, it was not deemed adequate for his participation in the revamped RIFA program. Schimm alleged that exclusion from the revamped RIFA program limited his access to research assistance and traders' markets. Schimm further stated that in January 1994, Olsen was fired by PSI and replaced by a string of four or five temporary managers, and that the regional manager, Charles Grouse, had indicated a strong desire to close the Richmond Office due to lack of profitability. Schimm alleged that as a result of Olsen's departure and the uncertainty of the future of the Richmond Office, he was effectively discharged without cause since PSI left him no alternative but to protect his career by seeking employment elsewhere, and that therefore PSI is barred from recovery under the first promissory note. In addition, Schimm asserted that the provisions of the employment agreement relating to unearned transitional compensation is ambiguous in that it speaks of termination for cause, and therefore should be construed against PSI. Finally, Respondent Schimm stated that he does not contest his obligation under the second promissory note.

RELIEF REQUESTED

Claimant PSI requested the sum of \$27,500 based on Respondent Schimm's alleged default in repayment of the promissory note, interest on that sum at 8% per annum from March 14, 1994 to the

date of payment, the sum of \$4,909.20 based on Schimm's default in repayment of the second note, cost of collection, cost of the arbitration proceeding including reasonable attorneys' fees, and any other relief that the arbitrators deem fit.

Respondent Schimm requested that the sum of \$27,500 be accelerated as contemplated by the Employment Agreement as the remaining transitional compensation installment, less withholding taxes, along with the remaining obligation under the promissory note; interest on the above sum at the rate of 8% per annum cease accruing after March 14, 1994; and that no further claims by PSI be acknowledged or awarded.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original remains 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, Jeffery Schimm, shall be liable for, and shall pay to Claimant, Prudential Securities, Inc., the sum of Thirty Thousand Dollars and No Cents. (\$30,000.00).
2. Any relief not specifically provided for herein is denied.

FORUM FEES

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

2 hearing sessions x \$600 = \$1,200.

Pursuant to Section 44(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$500, and shall refund the hearing session deposit in the amount of \$600 previously paid to the NASD by Claimant, Prudential Securities, Inc.

The panel has ordered that additional forum fees in the amount of \$1,000 shall be paid by the Respondent, Jeffery Schimm, and that the NASD shall retain the \$200 deposit previously paid to the NASD by Schimm.

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

By The Arbitration Panel:

Dated:

Stanley H. Ragle, Esq., Presiding
Industry Arbitrator

Ronald T. Dilks
Industry Arbitrator

4-11-95


C. Gregory Ellison
Industry Arbitrator

Date Award Served By the NASD:

4/17/95

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