

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Dennis L. Bell, d/b/a
Bell Enterprises,

Claimant and Counter-Respondent,

and

No. 95-00965

Prudential Insurance
Company of America
District Agencies Division,
James D. Seabury, James T. Moore,
Paul P. Caswell, Gary W. Robinson,
and Lynn M. Magnuson,

Respondents and Counter-Claimants.

REPRESENTATION OF PARTIES

Claimant Dennis L. Bell, d/b/a Bell Enterprises ("Claimant") was represented by E. Powell Miller, Esq. of Mantese Miller and Mantese located in Southfield, Michigan.

Respondents Prudential Insurance Company of America District Agencies Division ("Prudential"), James D. Seabury ("Seabury"), James T. Moore ("Moore"), Paul P. Caswell ("Caswell"), Gary W. Robinson ("Robinson"), and Lynn M. Magnuson ("Magnuson") (collectively referred to as "Respondents") were represented by Robert T. Magill, Esq. of Faegre & Benson located in Minneapolis, Minnesota. As further discussed in *Other Issues Considered and Decided*, Respondent Moore was dismissed from this matter without prejudice prior to the hearing on the merits.

CASE INFORMATION

The Statement of Claim was filed on or about February 23, 1995.

Claimant's Submission Agreement was signed on February 17, 1995.

The Joint Statement of Answer and Counterclaim was filed on or about June 9, 1995.

Claimant's Answer to Respondents' Counterclaim was filed on or about July 10, 1995.

Respondent Prudential's Submission Agreement was signed on March 21, 1995 by Janet L. Witort,

Assistant General Counsel of the Prudential Insurance Company of America.

Respondent Seabury's Submission Agreement was signed on May 15, 1995.

Respondent Moore's Submission Agreement was signed on May 15, 1995.

Respondent Caswell's Submission Agreement was signed on May 18, 1995.

Respondent Robinson's Submission Agreement was signed on June 5, 1995.

Respondent Magnuson's Submission Agreement was signed on May 15, 1995.

HEARING INFORMATION

A telephonic pre-hearing conference was held on December 9, 1996 for one (1) session and May 6, 1997 for one (1) session.

An in-person pre-hearing conference was held on June 7, 1996 for two (2) sessions.

A telephonic pre-hearing conference before the full panel was held on November 17, 1995 for one (1) session.

The hearing was held on: December 5, 1995 for two (2) sessions; May 7, 1996 for two (2) sessions; January 27, 1997 for two (2) sessions; January 28, 1997 for two (2) sessions; January 29, 1997 for two (2) sessions; January 30, 1997 for two (2) sessions; January 31, 1997 for two (2) sessions; May 12, 1997 for two (2) sessions; May 13, 1997 for two (2) sessions; May 14, 1997 for two (2) sessions; May 15, 1997 for two (2) sessions; August 11, 1997 for two (2) sessions; August 12, 1997 for two (2) sessions; August 13, 1997 for two (2) sessions; August 19, 1997 for two (2) sessions; August 20, 1997 for two (2) sessions; August 21, 1997 for two (2) sessions; and August 22, 1997 for two (2) sessions.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that he was a successful agent in Prudential's District Agencies Division from 1983 to 1991. Claimant contended that he generated substantial income for Prudential's District Agencies' Escanaba Office (the "Escanaba Office") and various employees of Prudential, including Respondents Seabury (district manager) and Moore (sales manager), who were entitled to compensation in the form of overrides out of commissions generated by Claimant. Claimant asserted that everything changed when Claimant decided to leave Prudential's District Agencies Division to join Prudential's Ordinary Agencies Division. Claimant maintained that in Prudential,

a switch from District Agencies to Ordinary Agencies is not a simple intra-company transfer. Claimant alleged that the two agencies are run like separate companies with historic rivalries more intense than competition between separate corporations. Claimant contended that his departure from District Agencies caused Respondents to lose substantial compensation at the Escanaba Office and to lose substantial prestige within the Prudential company. Claimant asserted that District Agencies, and certain of its members, most notably, Respondents Seabury, Moore, Caswell and Robinson, began a vicious campaign to destroy Claimant and his business. Claimant maintained that this campaign included: persuading Claimant's customers to transfer business from Claimant to District Agencies; lying to customers about Claimant and his business practices; soliciting Claimant's customers; wrongfully withholding mail belonging to Claimant; covertly hiring away a key Bell employee; making a secret deal with that employee to leave Claimant without notice; and engaging in a series of other acts designed to sabotage, harass and interfere with Claimant and his business. Claimant alleged that these efforts caused Claimant severe emotional injury, damage to his reputation, depression, panic attacks and mood swings, which have harmed him and his family. Claimant contended that Respondents also caused damage to Claimant's business by causing him to lose clients and by inhibiting his ability to grow his business to its full potential. Claimant made claims, including: tortious interference with contracts, tortious interference with business expectancy, defamation and unfair competition.

Respondents denied all liability to Claimant in the Joint Statement of Answer and Counterclaim. Respondents alleged that the Claimant grossly exaggerated his importance to Prudential in the Statement of Claim. Respondents contended that Claimant did not leave Prudential because of the alleged business practices of Respondents, but rather that Claimant was himself guilty of unethical, illegal, and outrageous conduct. Respondents maintained that Claimant left Prudential because he lost his status as the "number one agent" in the Escanaba Office. Respondents denied that they had interfered with Claimant's business in any way. Respondents also denied that they wrongfully deprived Claimant of a key employees' services or refused to sell Claimant office furniture and equipment. Respondents further denied that they wrongfully withheld Claimant's mail or had stolen or attempted to steal any of Claimant's clients. Respondents denied that they wrongfully sent solicitation letters to Claimant's clients or made defamatory statements to Claimant's customers.

In the Counterclaim, Respondent's alleged that the Claimant had wrongfully and intentionally misappropriated, and attempted to misappropriate, local Prudential business for himself, to the damage of all Respondents. In addition, Respondents contended that the Claimant had wrongfully continued to access information concerning clients and had refused to reassign certain policies that were temporarily assigned to him by Respondent Seabury in 1989. Respondents asserted that Claimant had wrongfully induced and attempted to induce, Prudential policyholders to cash surrender existing coverage. Respondents maintained that Claimant had also wrongfully induced, and attempted to induce, Prudential policyholders to remove Respondent Caswell as a servicing agent or to eliminate Caswell's commission interest in the account or both. Respondents alleged that Claimant's actions constitute conversion and tortious interference with contract under Michigan law. Respondents also contended that Claimant's actions also violate the express terms of Claimant's

Agent's contract.

Claimant denied all liability to Respondents in the Answer to Counterclaim. Claimant alleged that the allegations in the Counterclaim are inconsistent with Respondents' prior admissions. Claimant also contended that there was no meaningful contemporaneous evidence to support any of Respondents' allegations.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of at least \$500,000, plus an award of exemplary damages because Respondents' efforts to destroy Claimant's reputation and interfere with his business was intentional and malicious. In the Statement of Answer to the Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety with prejudice.

In the Statement of Answer and Counterclaim, Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice. Respondents also requested an award of: (1) compensatory damages of not less than \$500,000; (2) an award of punitive damages; (3) attorneys' fees; (4) costs, disbursements and expenses; (5) an order requiring Claimant to return to representatives of Prudential Insurance hard copy records and files, purge all electronic records, terminate his access to those parts of FOCUS that contain information concerning existing clients of the Escanaba Office; (6) an award requiring Claimant to reassign the policies temporarily assigned to him by Seabury; and (7) for such other relief deemed just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

The parties filed a Stipulation of Dismissal without Prejudice as to Respondent James Moore on or about January 8, 1996.

Claimant's Motion to Disqualify Counsel for Respondents was denied.

Respondents' Request that the hearing take place in Chicago or Minneapolis was denied.

Claimant's Motion for Default Judgement was denied.

Claimant's Motion to Dismiss the Counterclaim prior to hearing was denied.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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) That the Statement of Claim is hereby dismissed in its entirety with prejudice. Specifically, the panel finds Respondent Magnuson breached no duty she owed to Claimant by leaving the employ of Claimant. Further, even if Respondent Magnuson's leaving were a breach of duty, the Panel finds no compensable damages attributable to such breach. The panel also finds no compensable damages to have been caused by the delay in forwarding the Claimant's mail, the difficulty in transferring the Claimant's furniture, or the allegedly defamatory statements made by the Respondents. The panel finds no "business interference" other than what it might expect between business rivals in a competitive marketplace. The panel further finds that the Claimant has failed to carry his burden of proof in showing a causal connection between the actions of the Respondents and the Claimant's psychological condition.
- (2) That the Counterclaim is hereby dismissed in its entirety with prejudice. In the opinion of the Panel, the gift to public broadcasting *did* qualify as a matching gift. The panel also finds that no conduct occurred other than it would expect to find in a competitive business environment.
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are hereby denied in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) pre-hearing conferences x \$300 = \$1,200 in forum fees. There were thirty-seven (37) hearing sessions x \$750 = \$27,750 in forum fees. Total forum fees = \$28,950. Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant. Pursuant to § 10205(c) of the Code, NASD Regulation, Inc. Office

of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondents.

Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondent Prudential.

Pursuant to § 10205(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$13,725 (1/2 total forum fees - hearing session deposit). Pursuant to § 10205(c) of the Code, Respondents are liable for and shall pay forum fees in the amount of \$13,725 (1/2 total forum fees - hearing session deposit).

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Barry Goldman, Esq.
Barry Goldman, Esq.
Chairperson
Public Arbitrator

September 2, 1997
Dated:

/s/ Levi T. Gardner, III
Levi T. Gardner, III
Panelist
Public Arbitrator

September 2, 1997
Dated:

/s/ Alfred B. Moran
Alfred B. Moran
Panelist
Industry Arbitrator

September 4, 1997
Dated:

For NASD use only:
Date Award was served on the parties: September 5, 1997