

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Randall M. Cutts

95-01379

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION

Claimant Randall M. Cutts ("Cutts") appeared pro se.

For Respondent Prudential Securities, Inc. ("Prudential") appeared William W. Allen, Esq. of the firm Gess, Mattingly & Atchison located in Lexington, Kentucky.

CASE INFORMATION

The Statement of Claim was filed on March 10, 1995.

Claimant's Submission Agreement was signed on March 10, 1995.

Respondent's Statement of Answer was filed on May 9, 1995.

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

HEARING INFORMATION

Hearing Date/Sessions: January 29, 1996 - Two Sessions

The hearing took place at the Marriott Hotel in Louisville, Kentucky.

CASE SUMMARY

Claimant Cutts alleged that he had been employed an account executive at Respondent Prudential Securities' Lexington, Kentucky office until August 1, 1989 at which time Claimant resigned from active service with Prudential pursuant to an agreement whereby Cutts would sell his book of accounts to two Prudential registered representatives and receive one-third of the commission received from the accounts through August 1, 1994. Claimant alleged that Prudential paid Cutts one-third of the commissions through December 31, 1989 and on January 1, 1990, Cutts agreed to a modification of the agreement whereby Cutts would be paid \$1,500 per month for the remaining months of the agreement. Claimant asserts that this amount was paid through February 1, 1991 and on March 1, 1991, the local manager reduced the salary to \$750. Claimant asserted that this amount was paid until August 1, 1991 at which time a new local manager informed Cutts that Prudential would no longer make the payments unless Cutts

returned to active sales. Cutts maintained that he refused to return to active sales as all of his accounts had already been turned over.

Claimant asserts that he has suffered damages of \$ 57,750.00 as a result of Respondent's failure to make the agreed upon salary payments.

Respondent Prudential maintained that Cutts was employed through August 23, 1991, serving as a stockbroker until January, 1991 thereafter serving as a Registered Sales Assistant until he was terminated for cause on August 23, 1991. Prudential further maintained that Cutts, a top-producing broker, complained to the office manager that he was "burned out" and desired to reduce his level of activity until he became eligible for retirement benefits at age 55. Prudential asserted that Cutts proposed to enter into a partnership whereby Cutts' book of clients would be serviced by Cutts and two other brokers and the net commission income would be split equally amongst the three; that this arrangement continued until late 1990 at which time Cutts was informed by one of the brokers who serviced Cutts' accounts that his failure to attend the office was contrary to a term of the arrangement at which time Cutts agreed to become a Registered Sales Assistant with a gross salary of \$740 per month; that Cutts continued to fail to attend the office and was advised in the summer of 1991 by the new Resident Manager that his employment would be terminated if he did not attend the office during office hours or return as a full time broker; that Cutts declined both options and was terminated on August 23, 1991.

Prudential denied it ever entered into an oral employment with Cutts for any term certain; denied that it promised Cutts that he did not have to perform any work for Prudential; denied that it promised to pay \$ 1,500 a month for five years for not working at Prudential; denied that it promised Cutts that he could earn unlimited outside income from selling securities for others while not working for PSI during his employment for a five-year term.

Prudential asserted a counterclaim for contribution or indemnity arising out of the settlement of certain claims asserted against Prudential by former customers of Cutts while Cutts was employed by Prudential. Prudential maintained that due to the serious nature of the claims asserted and the apparent misconduct of Cutts with respect to certain customers' accounts, Prudential entered into settlement agreements with some of the customers who asserted claims, paying substantial sums in settlement. Prudential asserted the aggregate sum paid in settlement of Cutts' former clients claims exceeded \$ 71,000.00 and that Prudential is entitled to recover all or a portion of these sums by way of contribution or indemnity together with expenses associated therewith, including attorney's fees.

RELIEF REQUESTED

Claimant Cutts requested compensatory damages in the amount of \$ 57,750.00.

Respondent Prudential requested dismissal of the Statement of Claim, costs incurred in defending the Statement of Claim, including attorney's fees and all or a portion of the settlement monies paid to Cutts' former customers and costs and fees associated therewith, including attorney's 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, Inc. be and hereby is liable and shall pay to the claimant the sum of \$ 6,662.78, interest specifically excluded.
2. All other claims and counterclaims are hereby dismissed with prejudice.

FORUM FEES

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

2 sessions x \$ 600.00 = \$ 1,200.00

1. Claimant Cutts is liable and shall pay to the NASD the sum of \$ 600.00 representing one-half of the forum fees assessed. Claimant has previously deposited a hearing session deposit in the amount of \$ 600.00. Therefore, there are no additional forum fees due from claimant.
2. Respondent Prudential is liable and shall pay to the NASD the sum of \$ 600.00 representing one-half of the forum fees assessed. Respondent has not remitted their (i) section 45 Member surcharge due in the amount of \$300.00 and (ii) counterclaim filing fee due in the amount of \$500.00. Therefore, the amount due and owing from respondent Prudential is \$1,400.00.

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

Concurring Arbitrators' Signatures

Name


Gerald B. Brenzel

Edward T. Kennedy

George W. Humm

Date of Decision: April 25, 1996

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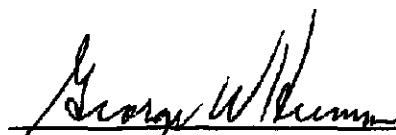
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