

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Lawrence Starr

95-01908

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION

For Claimant Lawrence Starr ("Starr"): Lee H. Schillinger, Esq. and John Brekka, Esq. of Lee H. Schillinger, P.A., Hollywood, Florida.

For Respondent Prudential Securities, Inc. ("PSI"): Richard Martens, Esq. of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: April 13, 1995.

Claimant's Submission Agreement signed: April 15, 1995.

Amended Statement of Claim filed: July 1, 1997.

Statement of Answer and Counterclaim filed by Respondent: June 19, 1995.

Response to Amended Statement of Claim filed: April 13, 1998.

Respondent's Submission Agreement/Corporate Acknowledgment signed: May 10, 1995 by Elena M. Naughton of behalf of the firm.

HEARING INFORMATION

On December 22, 1997 and March 11, 1998, the Chairperson conducted pre-hearing conferences which lasted two (2) sessions.

On April 13 and 14, 1998; November 5, 6 and 11, 1998; December 2 and 3, 1998; February 2 and 3, 1999; and, March 2, 1999, hearings which lasted twenty (20) sessions were conducted in Fort Lauderdale and Boca Raton, Florida.

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CASE SUMMARY

Claimant alleged the following: that he was damaged by the false and misleading sales representations made by PSI in its sales of Direct Investments; that as a result of his reliance upon the misrepresentations contained in the sales materials, Claimant sold products to his clients which caused them to suffer great losses for which he was blamed; that when customers complained, PSI denied their claims and failed to admit responsibility for the dissemination of the misrepresentations; and, that as a result, Claimant's reputation with his customers was damaged causing him to lose a significant amount of his client base and to suffer emotional distress as a result. Claimant asserted claims against PSI for defamation and alleged that PSI, through its agents and employees, repeatedly defamed Starr to his current and former clients, colleagues, other brokers, current and prospective employees, and others, including, without limitation, publishing and republishing false and defamatory Forms U-4's and DRP-5's. Claimant further asserted claims against PSI for tortious interference with the business relationships with his customers, common law fraud, breach of fiduciary duty, negligent misrepresentation, negligence and gross negligence, breach of promise, violation of duties imposed by the NASD Rules of Fair Practice and rules of the NYSE, violation of the Florida Securities and Investor Protection Act, intentional infliction of emotional distress, wrongful termination and a claim for loss of personal investments.

Respondent denied the allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant was making PSI a scapegoat for his own bad business decisions and professional failures; that Claimant's counsel previously represented a number of Claimant's complaining clients and made the allegations that gave rise to a duty to report; and that those complaints resulted in the amended U-4 filings by PSI. Respondent next alleged that Claimant was a broker with many years of experience and a tendency to sell the products available with the highest commission; that part of the reduction in Claimant's income was due to the illiquid nature of limited partnerships, which limited reinvestment opportunities; and that another factor in Claimant's business decline was his poor relations with his clients.

With respect to the defamation claims arising from PSI's regulatory reporting, PSI maintained that it had an absolute privilege to make the statements it did; that it had a qualified privilege that could only be overturned on a showing of malice; that the statements were required to be made and, therefore, an immunity attaches; that the statements that were made were true; that the statute of limitations for any of the causes of action had expired; and, that the statements made by PSI were truthful and truth is a defense to a defamation action.

Respondent further asserted a counterclaim for damages to compensate it for monies paid to Starr's customers in settlement of claims brought by them which alleged that Starr breached duties owed to them, including, but not limited to, allegations that Starr acted outside the scope of his duties and in violation of firm policies, state and federal securities laws, or the rules of the regulatory agencies.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$6,000,000.00 on his claims in tort; punitive or exemplary damages in an amount not less than \$20,000,000.00; all of his costs, expenses, and disbursements, including attorney's fees and expert witness fees, associated with the proceeding; prejudgment interest; referrals to the NASD, NYSE, SEC and all state

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securities or blue sky commissioners stating that all proceedings brought against Claimant were caused by Prudential's conduct and not Claimant's conduct; that the resulting Form U-4 amendments be removed; and, for such other and further relief as the arbitrators deemed just.

Respondent requested a dismissal of all claims against it as well as relief on its counterclaim in an amount in excess of \$500,000.00.

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 NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found not liable and, therefore, all claims against it, including the request for punitive or exemplary damages, are hereby denied.
2. Respondent's counterclaim is hereby denied.
3. The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10205(b) of the Code of Arbitration Procedure ("the Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10205(c) of the Code, the arbitration panel has assessed forum fees in the amount of \$30,600.00 (twenty (20) hearing sessions x \$1,500.00 + two (2) pre-hearing sessions (Chairperson only) x \$300.00) as follows:

Respondent is assessed forum fees in the amount of \$30,600.00 for which NASD Regulation Inc. shall retain the \$750.00 previously deposited by Respondent in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Respondent of \$29,850.00.

OTHER FEES

1. Pursuant to Rule 10205 of the Code, Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$500.00.
2. Pursuant to Rule 10205 of the Code, Respondent has paid to NASD Regulation, Inc. the counterclaim filing fee of \$500.00.

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3. Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Regulation, Inc. the member surcharge of \$500.00.

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

ARBITRATION PANEL**Concurring Arbitrators' Signatures**

/s/
Bonnie L. Roddenberry, Esq.

Public/Chairperson

/s/
Sterling F. Tremayne

Public/Panelist

/s/
Daniel H. Yaffe

Industry/Panelist

Date of Decision: April 6, 1999

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Date of Decision: 4/1/99