

## **AWARD**

NASDR Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Edwin Troy Hawkins

and

Case Number 95-02894

Prudential Securities, Inc., John M. Rhoades,  
Kevin J. O'Friel, Kent Varner, Joe Nittolo, et al.

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### **REPRESENTATION OF PARTIES**

Claimant Edwin Troy Hawkins ("Claimant") was represented by Joe B. Abbey, Esq. of the Law Offices of Joe B. Abbey, located in Dallas, Texas and Dean Carlton, Esq. of the Law Offices of Dean Carlton, located in Dallas, Texas.

Respondents Prudential Securities, Inc., John M. Rhoades, Kevin J. O'Friel, Kent A. Varner, Joseph J. Nittolo, and Don Littlefield ("Respondents") were represented by Steven J. Berry, Esq. and Robert L. Wright, Esq. of Gardere & Wynne, LLP located in Dallas, Texas.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about June 13, 1995. Claimant's Amended Statement of Claim as filed on or about December 26, 1995.

Claimant's Submission Agreement was signed on March 15, 1995.

Respondent's Statement of Answer was filed on or about January 12, 1996.

The NASDR has no record of a properly executed Submission Agreement from Respondent Prudential Securities, Inc.

The NASDR has no record of a properly executed Submission Agreement from Respondent John M. Rhoades.

The NASDR has no record of a properly executed Submission Agreement from Respondent Kevin J. O'Friel.

The NASDR has no record of a properly executed Submission Agreement from Respondent Kent A. Varner.

The NASDR has no record of a properly executed Submission Agreement from Respondent Joseph J. Nittolo.

The NASDR has no record of a properly executed Submission Agreement from Respondent Don Littlefield.

Claimant's Response to Statement of Answer was filed on or about February 6, 1996.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was held on:

January 24, 1996, for one (1) session.

The hearing was held on:

August 5, 1996 for two (2) sessions.  
August 6, 1996 for two (2) sessions.  
August 7, 1996 for two (2) sessions.  
August 8, 1996 for two (2) sessions.  
August 9, 1996 for two (2) sessions.  
August 12, 1996 for two (2) sessions.  
August 13, 1996 for two (2) sessions.  
August 14, 1996 for two (2) sessions.  
August 15, 1996 for two (2) sessions.  
August 16, 1996 for two (2) sessions.

The hearing was held in Dallas, Texas.

### **CASE SUMMARY**

Claimant alleged that he was employed as a broker by Respondent Prudential Securities, Inc. ("Prudential"). Claimant asserted that he was wrongfully terminated on September 6, 1994. Claimant maintained that on or about the date Claimant left the employment of Respondent Prudential, Respondents entered into a "conspiracy to blackball" him from the brokerage industry. Claimant maintained that Respondents caused false statements to be placed in Claimant's Form U-5, including an alleged incident of unauthorized entry into Claimant's office using a false name in order to seize customer complaint files. Claimant alleged that Respondents made defamatory statements about Claimant that were libelous per se and slanderous per se. Claimant maintained that these statements were directed to the public, including Prudential coworkers, customers, and employees of competing brokerage firms. Claimant asserted that statements about Claimant expressed by Respondents Rhoades, Varner, O'Friel, and Nittolo were made with malice. Claimant maintained that Respondents

Rhoades and Littlefield, acting on behalf of Respondent Prudential, filed a criminal complaint against Claimant. Claimant alleged that Respondents acted maliciously in instigating the criminal prosecution. Claimant maintained that Respondents coerced Prudential employees to sign incomplete and exaggerated affidavits to influence the Prosecuting Attorney and the Grand Jury in the criminal prosecution. Claimant further asserted that Respondents acted in bad faith in violation of the NASDR Fair Dealing Regulations. Claimant alleged that Respondents' actions caused him to sustain damage to his reputation, character, and social and professional standing resulting in the loss of clients. Claimant also asserted that he suffered from mental anguish, embarrassment, great humiliation, and health problems due to Respondents' actions.

Respondents, in their Statement of Answer, denied any involvement in a "conspiracy to blackball" Claimant. Respondents further denied both issuing defamatory statements and making any statements that were either libelous or slanderous. Respondents maintained that all statements made with respect to Claimant's activities as a broker, termination, or alleged unauthorized entry into Prudential offices were justified and reasonable communications, and were directed only to persons germane to the situation. Respondents further maintained that any communications made to law enforcement officials were made in good faith and based upon reliable evidence, and as such were also protected communications. Respondents denied each allegation of impropriety contained in Claimant's Amended Statement of Claim. Respondents also denied that Claimant had been damaged as alleged. Respondents further denied that they were liable to Claimant in any manner. Respondents contended that all statements made in connection with Claimant's Form U-5 were absolutely privileged, and as such, could not serve as the basis for any cause of action. Respondents further asserted that any statements made by Respondents to other Prudential employees, customers and employees of competing brokerage firms were protected by a qualified privilege. Respondents asserted truth as a complete defense to all of Claimant's defamation claims. Respondents maintained that, under Texas law, Claimant could not assert a cause of action for wrongful termination.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$500,000 for slander per se and libel per se. Claimant also requested special damages for loss of customers and income in an amount in excess of \$2,000,000. Claimant further requested damages arising from the criminal prosecution in the amount of \$5,000,000. Claimant asked for Attorney's Fees of \$50,000. Claimant requested other and further relief in law and equity to which Claimant showed himself justly entitled.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs including Attorneys' Fees, expert fees, forum fees and other expenses. Respondents further requested that Claimant's conduct be referred to the Business Conduct Committee for further action.

### **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 original(s) remain on file with NASDR Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, 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 without prejudice.
- (2) That each party shall be responsible for his or her own Attorney's Fees incurred as a result of legal representation in this case;
- (3) That all relief requested in this cause and not expressly granted is hereby denied;

### **FORUM FEES**

Forum fees are calculated at the rate of \$1000 per hearing session and \$300 for each pre-hearing conference, if any. Pursuant to §43(b) 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. There was one (1) pre-hearing session  $\times$  \$300 = \$300 in forum fees. There were twenty (20) hearing sessions  $\times$  \$1000 = \$20,000 in forum fees. Total forum fees = \$20,300 less \$1,000.00 hearing session deposit previously paid by Claimant for a total due of \$19,300.00. The Respondents are jointly and severally liable for and shall pay to the NASDR the remaining forum fees in the amount of \$19,300.00.

Pursuant to §43(c) of the NASDR Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500. Respondents are jointly and severally for and shall reimburse to the Claimant the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

NASDR Regulation, Inc. Office of Dispute Resolution  
Arbitration No.  
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Pursuant to §45(a) of the NASDR Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500 previously paid by Respondent Prudential.

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

Dated:

/s/ Douglas F. Pierce  
Douglas F. Pierce  
Public Arbitrator, Presiding Chair

September 27, 1996

/s/ Carroll V. Galbreath  
Carroll V. Galbreath  
Public Arbitrator

September 27, 1996

/s/ Jack R. Settles  
Jack R. Settles  
Industry Arbitrator

September 30, 1996

Date of Service by NASDR: October 4, 1996

ORDER OF CLARIFICATION

NASDR Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Edwin Troy Hawkins


and

Case Number 95-02894

Prudential Securities, Inc., John M. Rhoades,  
Kevin J. O'Friel, Kent Varner, Joe Nittolo, et al.

We the undersigned arbitrators having heard and decided the above-captioned arbitration matter, hereby confirm that we intended to render a full and final resolution of all matters in controversy in arbitration. We further confirm that we intended to dismiss the Claim in its entirety with prejudice.

Dated:

  
Douglas P. Pierce  
Public Arbitrator, Presiding Chair

1-4-98

Carroll V. Galbreath  
Public Arbitrator

Jack R. Settles  
Industry Arbitrator

ORDER OF CLARIFICATION

NASDR Regulation, Inc. Office of Dispute Resolution

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Dated:

Douglas F. Pierce  
Public Arbitrator, Presiding Chair

Carroll V. Galbreath  
Carroll V. Galbreath  
Public Arbitrator

January 2, 1998

Jack R. Setjes  
Industry Arbitrator

**ORDER OF CLARIFICATION**

**NASDR Regulation, Inc. Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Edwin Troy Hawkins**

**and**

**Case Number 95-02894**

**Prudential Securities, Inc., John M. Rhoades,  
Kevin J. O'Friel, Kent Varner, Joe Nittolo, et al.**

We the undersigned arbitrators having heard and decided the above-captioned arbitration matter, hereby confirm that we intended to render a full and final resolution of all matters in controversy in arbitration. We further confirm that we intended to dismiss the Claim in its entirety with prejudice.

**Dated:**

**Douglas F. Pierce**  
**Public Arbitrator, Presiding Chair**

**Carroll V. Galbreath**  
**Public Arbitrator**

**Jack R. Senies**  
**Industry Arbitrator**

**1-2-98**





**NASD Regulation, Inc.**

Office of Dispute Resolution

10 S. LaSalle Street \* Suite 1110 \* Chicago, IL 60603-1002 \* 312-899-4440 \* Fax 312-235-8238

Via Fax

January 7, 1998

Steven J. Berry, Esq.  
Gardere & Wynne, LLP  
1601 Elm Street  
Suite 3000  
Dallas, TX 75201

Subject: *NASD Arbitration Number 95-02894*  
*Edwin Troy Hawkins vs. Prudential Securities, Inc., John M. Rhoades, Kevin J.*  
*O'Friel, Kent Varner, Joe Nittolo, et al.*

Dear Mr. Berry:

Following please find the order of clarification signed by all three arbitrators as required by the Court order dated November 26, 1997.

Very truly yours,

Susan M. Kozacik  
Staff Attorney  
(312) 899-4440

SMK:DMD:LC53A

lr:9/95

**RECIPIENTS:**

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