

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

PRUDENTIAL SECURITIES INCORPORATED,

Claimant,

-and-

No. 95-04295

ROBERT T. ZOLLER

Respondent.

REPRESENTATION OF

For Claimant: Prudential Securities Incorporated was represented by Steven P. Gomberg, Esq., of Prudential
Gomberg Kane & Fischer, Ltd., 208 South LaSalle Street, Suite-1800, Chicago, Illinois 60604; Kane & Fischer

For Respondent: Robert T. Zoller was represented by Kimberly A. Jones, Esq., Hudek & Associates, Inc., Robert T.
208 Nichols Road, Kansas City, Missouri 64112

CASE INFORMATION

Statement of Claim filed: (on or about) September 6, 1995.

Claimant's Submission Agreement signed on: September 6, 1995.

Respondent's Statement of Answer was filed: (on or about) October 27, 1995.

Respondent's Submission Agreement signed on: Respondent's Submission Agreement is signed but
not dated.

HEARING INFORMATION

The hearing was held on Thursday, September 5, 1996 and Friday, September 6, 1996 for two (2)
sessions each day, in Kansas City, Missouri, for a total of four (4) sessions.

CASE SUMMARY

Claimant, Prudential Securities Incorporated ("Claimant"), alleged that the Respondent, Robert T.
Zoller ("Respondent"), entered into a Promissory Note on July 1, 1992, (the "Note"), which by its

terms, Respondent agreed to repay the sum of **\$194,474.00** in four equal annual installment payments of **\$48,618.00** on July 1, 1993, July 1, 1994, July 1, 1995 and July 1, 1996, plus interest at the rate of 8% per annum. Claimant alleged that the Note provided for the payment of the entire amount due in the event of the termination, for any reason, of employment during the term of the Note. In addition, Claimant alleged that Respondent was not entitled to any unpaid transitional compensation if Respondent resigned or was terminated for cause. Respondent was terminated for cause on April 11, 1995, and there was a remaining balance due on the Note in the amount of **\$98,209.34**, arrears in the amount of **\$20,008.23**, plus interest. On or about May 17, 1995, Claimant tendered a demand to Respondent for the balance due under the Note and the arrears, plus interest. Claimant alleges that to date Respondent has failed and refused to honor his obligation to Prudential Securities Incorporated under the Note.

In his Answer, Respondent asserted that: The employment contract and Note were voidable due to the circumstances under which he was forced to sign the agreement; the signing of the agreement was not a voluntary act in that Claimant called, over Respondent's instructions, called his former branch manager and informed the manager that Respondent's license was being transferred to Claimant; the contact forced Respondent to accept Claimant's offer of employment; the circumstances under which Claimant employed Respondent established the defenses for economic duress and undue influence; Respondent was terminated due to his repeated complaints of the blatant self-dealing and sabotage practiced by the branch manager and his assistant; and that Claimant terminated Respondent for cause because the Note would become immediately due and payable, and deviating Claimant's contractual obligation to pay Respondent the remainder of his transitional compensation.

RELIEF REQUESTED

Claimant requested an award against Robert T. Zoller as follows:

- The principal balance due and owing under the Note in the amount of **\$98,209.34**;
- Interest on the balance due and owing under the Note from **07/02/1994** to **04/11/1995** at the contract rate of 8% per annum (\$21.53 per day) in the amount of **\$6,114.52**;
- Interest on the balance due and owing under the Note from **04/11/1995** to **09/05/1996** at the contract rate of 8% per annum (\$21.53 per day) in the amount of **\$11,023.36**;
- Interest on the balance due and owing under the Note at the contract rate of 8% (\$21.53) per day from **09/05/1996** to date of payment;
- Arrears on the Note in the amount of **\$20,008.23**;
- Attorneys fees and costs as agreed to under the terms of the Note; and
- Any other relief as the Arbitrators deem just.

Respondent requested that the arbitrators deny Claimant's Statement of claim in its entirety. In the alternative, Respondent requested that any arbitration award be offset by unpaid transitional

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compensation, that Respondent recover any other relief the panel deemed warranted, including his costs and attorney fees, and the expungement of his U-5.

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 NASD Regulation, Inc. Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

Respondent, Robert T. Zoller is liable for, and shall pay to the Claimant the sum of **\$95,000.00** as satisfaction of its claims herein.

Except as set forth more specifically below, each party shall bear its own costs and expenses incurred in this arbitration.

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) sessions x \$750 = \$3,000 in forum fees. Pursuant to § 10332(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.

Pursuant to § 10332(c) of the NASD Code of Arbitration Procedure, 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. Dispute Resolution by the Claimant.

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350.00 previously paid by the Claimant.

Additional forum fees in the amount of \$750.00 are assessed against the Claimant.

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Additional forum fees in the amount of \$1,500.00 are assessed against Respondent.

Dated:

Robert L. Cowee
Robert L. Cowee
Industry Arbitrator, Presiding Chair

/s/

September 19, 1996

Melford V. McCormick

/s/

September 18, 1996

Melford V. McCormick

Industry Arbitrator

Marshall E. Talbot

/s/

September 18, 1996

Marshall E. Talbot

Industry Arbitrator