

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ronald H. Ward
Alfred V. Cognetti

95-05595

Name of Respondent

Pruco Securities Corp.

REPRESENTATION

For Claimants, Ronald H. Ward ("Ward") and Alfred V. Cognetti ("Cognetti"): Allan J. Fedor, Esq. and Franell Fedor, Esq., Fedor & Fedor, of Largo, Florida.

For Respondent, Pruco Securities Corp. ("Pruco"): Michael A. Schlanger, Esq., Gregory S. Karawan, Esq. and Lisa R. Zornberg, Esq., Sonnenschein Nath & Rosenthal, of New York, New York and Washington, D.C.

CASE INFORMATION

Statement of Claim filed November 24, 1995.

Claimants' Submission Agreement signed on June 13, 1995.

Claimants' responsive papers and Answer to Respondent's Counterclaims filed July 4, 1996.

Statement of Answer, Defenses and Counterclaims filed by Respondent on January 31, 1996.

Respondent's Uniform Submission Agreement signed on January 31, 1996, by Allen Harmon on behalf of Respondent.

HEARING INFORMATION

On July 8 1996, a Pre-Hearing Conference concerning discovery was held via telephone before Chairman West; in addition, on November 1, 1996, another telephonic conference was held with Chairman West.

On July 15, 16, 17, 18 19, 29, 30, 31, 1996, August 14, 15, 16, 1996, September 18, 19, 20, 1996, October 7, 8, 9, 10, 27, 28, 29, 1996, November 3, 4, 5, 1996, in Tampa, Florida, hearings lasting 45 sessions were conducted. (All the hearing days were two sessions in duration except for September 20, October 29, and November 5, 1996 which were one session).

CASE SUMMARY

Claimants were former managers and registered representatives for Respondent. Claimants alleged that Respondent used slides, video tapes, and other sales and training materials that directly violated securities laws by misrepresenting the products being sold, thereby inducing the sales force to omit material information from customers. Claimants also alleged that Respondent's senior managers suggested that their agents skirt the securities laws while maintaining an appearance of compliance with those laws. Claimants further alleged that Respondents later engaged in an internal campaign to accumulate, purge, and destroy all incriminating securities materials from its offices to avoid regulatory scrutiny of its illegal sales and training materials.

Claimants alleged that Respondent embarked upon a deliberate course of conduct designed to deflect the blame for such illegal sales practices from upper management by forcing Claimants to personally accept sanctions for securities violations that had been promoted, condoned and perpetuated by upper management. Claimants alleged that they refused to accept such improper sanctions and threatened to "blow the whistle" on Respondent to the regulatory authorities. On July 27, 1995, Claimants sent sworn whistle blowing affidavits to Arthur Ryan, Chairman of The Prudential. Claimants were terminated on or about November 10, 1995, and all their income and benefits were likewise terminated. Claimants alleged that Respondent took retaliatory personnel actions in retaliation for their threatening to "blow the whistle" on Respondent's illegal sales practices, its attempted cover-up of those practices by higher executives, and the illegal activities of Respondent's corporate executives.

The Claimants alleged that Respondent 1) violated Florida Statutes Section 448.102; 2) tortiously interfered with Claimants' advantageous business relationships; 3) violated the implied covenant of good faith and fair dealing in commercial trade matters; 4) engaged in defamation per se; 5) negligently and intentionally inflicted severe emotional distress on Claimants; and 6) failed to properly supervise the activities of its upper management and vice presidents.

Respondent denied all allegations of wrongdoing and maintained that Ward and Cagnetti were terminated from employment for their failure to properly supervise agents in the St. Petersburg office. Respondent further alleged that Ward and Cagnetti mailed their sworn affidavits to the company on or about July 27, 1995, in anticipation of their imminent termination for intentional wrong doing, and in an effort to extort money from Prudential, not as an act of good faith whistleblowing. In its Counterclaim, Respondent asserted that Ward and Cagnetti had breached their employment contracts and violated their fiduciary duties to the company, causing Respondent to suffer damages in excess of \$10,000.

RELIEF REQUESTED

Claimants requested damages for lost disability plan benefits, lost earning capacity, lost pensions and lost PIP benefits and other lost benefits in a collective amount in excess of \$5,000,000. Claimants also requested costs, expenses, disbursements and reasonable attorneys' fees, and filing and hearing advance fees paid to the NASD. Claimant further requested punitive damages and such other relief as the panel deemed just and proper.

Respondent requested dismissal of all claims against it, an award of damages arising from its Counterclaims, plus attorney's fees, costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

Respondent moved to dismiss all claims at the conclusion of Claimants' case-in-chief. The panel granted the motion only as to wrongful termination. The panel denied the motion as to allegations of retaliatory personnel actions other than termination taken by Respondent against the Claimant.

On November 4, 1996, the Panel granted Respondent's motion for leave to withdraw its Counterclaim, without prejudice, upon Respondent's Counsel assurance that no further action is contemplated. Respondent was directed to provide Claimants with a copy of the transcript for the session in which that assurance was expressed.

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, Pruco Securities, Corp., is found not liable and, therefore, all claims against it are hereby dismissed.
- 2) Claimants' requests for punitive damages, costs, expenses, disbursements and reasonable attorneys' fees are denied.
- 3) Respondent's requests for attorneys' fees, costs and expenses are hereby denied.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$68,100 (two telephonic conferences x \$300 plus 45 hearing sessions x \$1,500)

1) Claimants are hereby assessed, \$68,100; Mr. Ward is assessed \$34,050 of such amount and Mr. Cagnetti is assessed \$34,050. The NASD shall retain the \$1,500 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$66,600 payable to the National Association of Securities Dealers, Inc.

2) Respondent is hereby assessed \$1,500 for the non-refundable filing fee of \$1,000 for the counterclaims (\$500 for each claimant) plus the \$500 Rule 10333 member surcharge for which the NASD shall retain the previously deposited \$1,300 in partial satisfaction thereof, leaving a balance due to the NASD of \$200.

3) The NASD shall retain the non-refundable filing fee of \$500 paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name

Public

/s/
Stan West

Industry

/s/
Mark M. Mercier

Public

/s/
Albert R. Neville, Jr.

Date of Decision: December 26, 1996