

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Douglas W. Speed

96-00533

Name of Respondent

Prudential Securities, Inc

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**REPRESENTATION**

For Claimant: Robert J. Winicki, Esq. of the Winicki Law Firm, Jacksonville, FL.

For Respondent: Stuart H. Singer, Esq. of the law firm of Kirkpatrick & Lockhart, LLP, Miami, FL.

**CASE INFORMATION**

Statement of Claim filed: February 6, 1996.

Amended Statement of Claim filed: April 9, 1996.

Answer to Counterclaim filed: June 24, 1995.

Claimant's Submission Agreement signed: January 31, 1996.

Statement of Answer and Counterclaim dated: May 24, 1996.

Respondent's Submission Agreement signed: June 10, 1996.

**HEARING INFORMATION**

Five hearing sessions were conducted in this matter on June 18, 19 and 20, 1997 in Tampa, Florida.

## **CASE SUMMARY**

Claimant alleged that this case involved a claim by Douglas Speed, a former broker with Prudential Securities, Inc., for breach of an employment agreement by Prudential Securities, Inc. for its termination for cause of Mr. Speed's employment. In addition, Mr. Speed brought a defamation claim against Prudential Securities, Inc. regarding certain communications by Prudential Securities, Inc.'s brokers with clients of Mr. Speed which took place after Mr. Speed was terminated by Prudential Securities, Inc.

Respondent Prudential Securities, Inc. denied Claimant Douglas Speed's claims for breach of contract and libel. With respect to the breach of contract/wrongful termination claim, Prudential Securities, Inc. maintained that Mr. Speed was properly terminated for violation of Prudential Securities, Inc.'s rules governing the solicitation of private securities transactions. Furthermore, under applicable laws, as well as his contract of employment, Respondent maintained that Mr. Speed was an employee at-will and, thus, could be terminated with or without cause. In addition, Prudential Securities, Inc. categorically denied that any defamatory statements were made by any of its employees as alleged in the Statement of Claim.

The Respondent asserted a counterclaim alleging that the Claimant's filing of a state court complaint during the pendency of this arbitration was intended to vex and harass the Respondent by forcing it to litigate simultaneously on two fronts and cause them to incur costs in asserting a motion to compel arbitration in the state court action.

In response to the counterclaim, the Claimant maintained the exclusive forum for Prudential Securities, Inc. to obtain attorneys' fees and costs for filing its motion to compel arbitration in the circuit court was the circuit court. Claimant further alleged that the arbitration panel has no jurisdiction to decide the Respondent's counterclaim.

## **RELIEF REQUESTED**

Claimant requested economic damages in the amount of approximately \$475,000.00; the sum of approximately \$250,000.00 representing emotional damages and damages to the Claimant's reputation; punitive damages in an amount to be determined by the arbitration panel together with interest, reasonable attorneys' fees and the costs of the arbitration. Furthermore, the Claimant requested a dismissal of the counterclaim.

Respondent requested a dismissal of the Claimant's claims in their entirety, with an award of costs in favor of Prudential Securities, Inc. Furthermore, the Respondent requested an award of damages on its counterclaim in an amount the panel deemed just and proper, including attorneys' fees and costs.

## **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.

When the arbitration panel was originally constituted Gerald B. Conley was an industry arbitrator. Thereafter, his status changed and he was reclassified as a public arbitrator. At the commencement of the hearing all parties agreed to proceed with the hearing with the arbitration panel as it was constituted.

### **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:

Count I (Breach of Contract): The parties have agreed that liability and the award or non-award of damages, costs and fees is submitted to the panel for arbitration. The arbitration panel finds that Claimant's employment was at will and, therefore, finds in favor of the Respondent. However, the panel further finds that Claimant's termination by Respondent was without "cause" within the meaning of the employment agreement and directs that Respondent amend the explanation in paragraph 12 of the U-5 to read "Disagreement with management regarding firm policy."

Count II (Libel Per Se): The parties have agreed that the issue of liability and the award or non-award of damages, costs and fees are submitted for arbitration. The panel finds in favor of Respondent as to liability and damages on Count II.

Counterclaim: The arbitration panel finds the issue of liability as to the counterclaim is within the jurisdiction of the panel. The panel finds that Claimant's state court action was not filed for a vexatious or improper purpose and finds in favor of Claimant and against Respondent on the issue of liability. Absent consent of the parties, the panel finds they are without jurisdiction to deny Respondent's request for attorneys' fees or costs incurred before another tribunal.

The Claimant's requests for emotional damages, damages to reputation and punitive damages are denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, forum fees in the sum of \$5,000.00 (5 sessions X \$1,000.00) are assessed as follows:

1. The Claimant is assessed \$3,750.00 less the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$2,750.00
2. The Respondent is assessed the sum of \$1,250.00.

3. The Respondent is liable and shall pay to NASD Regulation, Inc. the sum of \$500.00 representing the claim filing fee for the counterclaim less the \$150.00 overpayment leaving a balance due of \$350.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

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Robert M. Shavick, Esq.

Public

/S/

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Langfred W. White, Esq.

Public

/S/

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Gerald B. Conley

Public

Date of Decision: July 18, 1997