

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Prudential Insurance Co. of America

96-00817

Name of Respondents

Paul Seymour
Steven G. Frederick

REPRESENTATION

For Claimant, The Prudential Insurance Co. of America ("Prudential") appeared Nathaniel H. Akerman, Esq. of Seyfarth, Shaw, Fairweather & Geraldson located in New York, NY.

For Respondent Paul Seymour ("Seymour") appeared Timothy J. Lawliss, Esq. of Lawliss & Cantwell located in Plattsburgh, NY.

Respondent Steven G. Frederick ("Frederick") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on February 22, 1996. Claimant's Submission Agreement was signed on February 21, 1996.

A Statement of Answer was filed by Respondent Seymour on May 20, 1995. Respondent Seymour's Submission Agreement was signed on May 3, 1996.

A Statement of Answer was filed by Respondent Frederick on May 17, 1996. Respondent Frederick's Submission Agreement was signed on May 3, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	September 16, 1996	-	2 Sessions
	September 17, 1996	-	3 Sessions
	September 18, 1996	-	3 Sessions

The Hearings were held at the Holiday Inn in Albany, NY.

CASE SUMMARY

Claimant stated that both respondents were employed by it as representatives servicing life insurance and annuity products. Claimant alleged that Respondent Seymour had accepted a position with a competitor and before resigning from claimant, delivered to his new employer a confidential customer list in order for his new employer to use in soliciting his existing customers to switch to the new company. Claimant further alleged that Respondent Seymour appropriated confidential information from claimant's computers and records such as policyholder home addresses, date of birth, premium, policy date, renewal date and policy number. According to claimant, Seymour and his assistant entered the computer system approximately 580 times, in two days, to obtain hard copies of customer records.

In addition, claimant contended that Seymour secured proprietary and confidential information on claimant's mutual fund customers including names of clients, names of mutual funds, number and value of shares. Claimant further contended that Seymour copied this information on to a computer disk and attempted to remove it from the hard drive.

Claimant argued that respondents, after their resignations, continued to collect premium checks from customers as a device to steal the customers from claimant.

Claimant alleged that respondents had breached their fiduciary duties, duty of good faith, loyalty, candor and not to exploit. Claimant further alleged that respondents misappropriated trade secrets and confidential proprietary information and breached the Agent's Agreement.

Respondent Seymour asserted general denials and maintained that the letter sent by his new employer to the policyholders was not a solicitation but instead a thank you letter since he did not wish to abandon them but wanted to assist them with their Prudential/Pruco investments. Seymour insisted that the names were obtained from his own knowledge and that the list was destroyed after the mailing. Seymour further insisted that the letter was drafted with the assistance of Mr. Barnum and Ms. Stebar from National Life to ensure that the letter did not constitute a solicitation and relied on their advice regarding the letter.

Seymour denied that he instructed Ms. Durham to double check the list of mutual fund customers against the computer files. According to Seymour the computer system records an entry for every screen and there are multiple screens for each account and calculated that even if there were 580 entries the information obtained probably only related to 150 accounts. Seymour argued that these records were not used to solicit customers and stated that he never used this information to harm claimant. Seymour also stated that the black binder and the computer were his property since they were created and purchased by him and reimbursed by claimant.

Since January 27, 1995 Seymour claimed to have not held himself out to be a representative of claimant but continued to deliver payments to claimant at the request of his former clients since they did not have confidence in their newly assigned representative.

Seymour filed counterclaims for breach of contract, unjust enrichment and defamation.

Respondent Frederick stated that the three ring binder he kept was to record the checks his clients would give him prior to his turning them over to claimant. Frederick further stated that although his former clients were aware he had resigned from claimant they continued to send him their premium payments. Frederick denied that this was part of a scheme to steal business from claimant or that this constituted a breach of his fiduciary duty owed his former employer. Frederick maintained that because of his insistence and reassurance, despite claimant's unprofessional agents, many of his former clients stayed with claimant and he never attempted to convert any of his former clients to another company.

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 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 Seymour be and hereby is liable and shall pay claimant the sum of \$10,197.60 in compensatory damages, interest specifically excluded.
2. Claimant's claims against Respondent Frederick be and hereby are denied.
3. All injunctive relief requested by claimant is denied.
4. All disputed property held by the Clinton County Court shall be turned over to the claimant with the exception of 2 original Trust Agreements which shall be returned to Mr. Seymour.
5. All counterclaims by Respondent Seymour be and hereby are dismissed in their entirety.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee submitted by claimant and have assessed the following forum fee:

$$8 \text{ Hearing sessions} \times \$750.00 = \$6,000.00$$

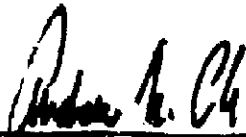
The arbitrators have determined that claimant shall bear one-half the cost of this arbitration and that Respondent Seymour shall bear one-half the cost of this arbitration.

Therefore claimant be and hereby is liable to and shall pay the NASD the sum of \$2,250.00 which represents one-half the forum fee less the hearing session deposit of \$750.00.

Therefore Respondent Seymour be and hereby is liable and shall pay the NASD the sum of \$3,000.00 which represents one-half the forum fee.

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

ARBITRATORS' SIGNATURES



Andrew N. Carnell, Esq.
Public Chairperson

J. Clark Winslow
Panelist

James J. Carroll
Panelist

I, Andrew N. Carnell, Esq., do hereby affirm, pursuant to Article 7507 of the Civil practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Andrew N. Carnell, Esq.
Public Chairperson

I, J. Clark Winslow, do hereby affirm, pursuant to Article 7507 of the Civil practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

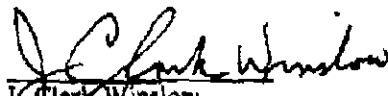
J. Clark Winslow

I, James J. Carroll, do hereby affirm, pursuant to Article 7507 of the Civil practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

James J. Carroll

ARBITRATORS' SIGNATURES

Andrew N. Carnell, Esq.
Public Chairperson

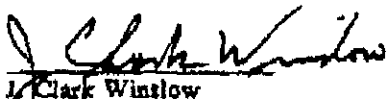

J. Clark Winslow
Panelist

James J. Carroll
Panelist

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Andrew N. Carnell, Esq.
Public Chairperson

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J. Clark Winslow

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James J. Carroll

Date of Decision: January 16, 1997

ARBITRATORS' SIGNATURES

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Public Chairperson

J. Clark Winslow
Panelist


James J. Carroll
Panelist


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James J. Carroll

Date of Decision: January 16, 1997