

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

and

96-01092

Name of Respondent

Frederick W. Azeltine

REPRESENTATION OF PARTIES

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

For Respondent: Frederick W. Azeltine was represented by William D. Nelson, Robinson, Waters, O'Dorisio and Rapson, 1099 Eighteenth Street, Suite 2600, Denver, Colorado 80202.

CASE INFORMATION

Statement of Claim filed: (on or about) March 11, 1996.

Claimant's Submission Agreement signed on: March 7, 1996.

Respondent's Statement of Answer was filed: (on or about) May 9, 1996.

Respondent's Submission Agreement signed on: August 27, 1996.

HEARING INFORMATION

The hearing was held on Tuesday, October 22, 1996, in Denver, Colorado, for a total of two (2) sessions.

CASE SUMMARY

Claimant, Prudential Securities Incorporated ("Claimant"), alleged that the Respondent, Frederick W. Azeltine ("Respondent"), entered into a Promissory Note on November 5, 1993, (the "Note"), which by its terms, Respondent agreed to repay the sum of \$80,000.00 in forty-three equal monthly installment payments of \$1,860.47 beginning with March, 1994 and ending with September, 1997, plus interest at the rate of 6% per annum. By the terms of the Note, Respondent also agreed that should his net commission check after taxes not meet or exceed the monthly installment, he would

be required to make up the arrears. 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 voluntarily resigned from Prudential on August 31, 1995, and there was a remaining balance due on the Note in the amount of \$46,511.63, arrears in the amount of \$2,262.93 plus interest. On or about December 5, 1995, Claimant tendered a demand to Respondent for the balance due under the Note, arrears and interest. Claimant alleges that to date Respondent has failed and refused to honor his obligation to Prudential Securities Incorporated under the Note.

Respondent filed an Answer on or about May 9, 1996. In his Answer, Respondent alleged that Claimant made various false representations. Respondent also alleged that Claimant breached its contractual obligations to Respondent and concealed the gravity of the legal problems Claimant faced pertaining to the limited partnerships. Respondent further alleged that Claimant's claims should be barred by its own conduct.

RELIEF REQUESTED

Claimant requested an award against Frederick W. Azeltine as follows:

- The principal balance due and owing under the Note in the amount of \$46,511.63;
- Interest on the balance due and owing under the Note from 08/29/1995 to 08/31/1995 at the contract rate of 6% per annum (\$7.65 per day) in the amount of \$22.95;
- Interest on the balance due and owing under the Note from 08/31/1995 to 10/22/1996 at the contract rate of 6% per annum (\$7.65 per day) in the amount of \$3,190.05;
- Interest on the balance due and owing under the Note at the contract rate of 6% (\$7.65) per day from 10/22/1996 to date of payment;
- Arrear on the Note in the amount of \$2,262.93;
- Attorneys fees and costs as agreed to under the terms of the Note; and
- Any other relief as the Arbitrators deem just.

Respondent did not request any specific relief, but claims that at a maximum, there is an outstanding balance on the Note of \$24,000.00. In addition, without specifying an amount, Respondent claims that Claimant owes Respondent amounts which more than offset any remaining balance.

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. Office of 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:

1. Respondent Frederick W. Azeltine shall be and hereby is liable for and shall pay to the Claimant Prudential Securities, Inc. the sum of **forty six thousand nine hundred eighty seven dollars and fifty six cents (\$46,987.56)** which sum includes an award of interest at the rate of 6% per annum to and inclusive of October 22, 1996.
2. Interest at the rate of 6% per annum is awarded on the above stated sum from and inclusive of October 23, 1996 to and inclusive of the date this award is paid in full.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$600 = \$1,200 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, the 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 \$600 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Prudential Securities, Inc. Respondent Frederick W. Azeltine shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$600 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Stanley H. Marks, Esq.

October 23, 1996

Stanley H. Marks, Esq.

Industry Arbitrator, Presiding Chair

/s/ S. James Horning

October 23, 1996

S. James Horning

Industry Arbitrator

/s/ Michael E. McCarthy

October 25, 1996

Michael E. McCarthy

Industry Arbitrator