

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

IN THE MATTER OF ARBITRATION BETWEEN
PRUDENTIAL SECURITIES INCORPORATED,

Claimant

No. 96-01848

v.

DANIEL J. RETZINGER

Respondent

REPRESENTATION OF PARTIES

Claimant Prudential Securities Incorporated ("Prudential") was represented by Michael A. Kraft, Esq., Gomberg Kane & Fischer, Ltd., 208 South LaSalle Street, Suite 1800, Chicago, Illinois 60604.

Respondent Daniel J. Retzinger ("Retzinger") appeared pro se.

CASE INFORMATION

Statement of Claim filed on: April 30, 1996.

First Amended Statement of Claim filed on: August 6, 1996.

Claimant's Submission Agreement signed on: April 26, 1996 by Steven M. Malina, Vice President and Deputy Regional Counsel, Prudential Securities Incorporated.

Respondent did not file an Answer or an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: March 17, 1997 for one (1) session; and
May 12, 1997 for one (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Prudential alleged that Respondent Retzinger entered into a Promissory Note on

January 12, 1995, (the "Note"), which by its terms, Retzinger agreed to repay the sum of \$132,300.00 in forty-three equal monthly installment payments of \$3,076.74 beginning with June, 1995 and ending with December, 1998, plus interest at the rate of 7% per annum. Furthermore, pursuant to the terms of the Note, should Retzinger's net commission check after taxes not meet or exceed the monthly installment, Retzinger would be required to make up the arrears. Prudential 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, Prudential alleged that Retzinger was not entitled to any unpaid transitional compensation if Retzinger resigned or was terminated for cause. Retzinger was terminated for cause from Prudential on January 18, 1996, and there was a remaining balance due on the Note in the amount of \$107,686.05, arrears in the amount of \$1,380.53 plus interest. On or about March 21, 1996, Prudential tendered a demand to Retzinger for the balance due under the Note, including arrears plus interest. Prudential alleges that to date Retzinger has failed and refused to honor his obligation to Prudential Securities Incorporated under the Note.

On or about May 15, 1996, one of Respondent's customers, Georgene Meyers ("Meyers") filed a complaint against Retzinger alleging unauthorized trading. After investigating the matter, Prudential entered into a Settlement Agreement with Meyers on or about June 26, 1996, whereby Prudential paid \$9,000.00 to Meyers. In addition, when Retzinger was terminated from Prudential he had a deficit commission balance in the amount of \$215.20. Claimant filed an Amended Statement of Claim on August 6, 1996, seeking reimbursement on the Meyers settlement in the amount of \$9,000.00, deficit commissions in the amount of \$215.20 plus the balance due on the Note.

Retzinger did not file an Answer to Claimant's original Statement of Claim, nor did Retzinger file an Answer to Claimant's First Amended Statement of Claim. At hearing, Retzinger asserted that he was wrongfully terminated from Prudential because his termination was without cause and due to personal differences with his branch manager.

RELIEF REQUESTED

Based on its original Statement of Claim and First Amended Statement of Claim, Claimant requests that an award be entered in favor of Prudential and against Daniel J. Retzinger as follows:

- The principal balance due and owing under the Note in the amount of \$107,686.05;
- Interest on the balance due and owing under the Note from 01/30/1996 to 03/17/1997, at the contract rate of 7% per annum (\$20.65 per day) in the amount of \$8,528.45;
- Interest on the balance due and owing under the Note at the contract rate of 7% (\$20.65) per day from 03/17/1997 to date of payment;
- Arrears on the Note in the amount of \$1,380.53;
- Reimbursement in the amount of \$9,000.00 for the Meyers settlement;
- Reimbursement in the amount of \$215.20 for the deficit commission balance;

- Attorneys fees and costs as agreed to under the terms of the Note; and
- Any other relief as the Arbitrators deem just.

Retzinger requested that the arbitrators not find him liable for the sums alleged by Prudential.

OTHER ISSUES CONSIDERED & DECIDED

At hearing, Prudential orally presented a Motion to Preclude Retzinger from presenting any matter, arguments or testimony. After hearing the parties respective arguments, the Panel determined that the Motion would be denied.

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 arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Daniel J. Retzinger is liable for and shall pay to Claimant Prudential Securities Incorporated the principal amount of the Note in the sum of \$107,686.05, plus interest at the rate of 7% per annum accruing from January 18, 1997 until the sum is paid in full;
2. In addition, Respondent Daniel J. Retzinger is liable for and shall pay to Claimant Prudential Securities Incorporated the sum of \$10,595.73, representing the arrears on the Note of 1,380.53, the deficit commissions balance of \$215.20, and the reimbursement of the settlement fees of \$9,000.00;
3. Furthermore, Respondent Daniel J. Retzinger is liable for and shall pay to Claimant Prudential Securities Incorporated the sum of \$11,331.09, representing attorneys' fees in the amount of \$9,186.50 and costs of \$2,144.59. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well the terms of the promissory note, and determined that authority existed for an award of attorneys' fees to the Claimant, Prudential Securities Incorporated; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent Daniel J. Retzinger is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the postponement fee in the sum of \$750.00 .

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge paid by Claimant Prudential Securities Incorporated.

FORUM FEES

Pursuant to Section 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$750.00 per session = \$1,500.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited by the Claimant, Prudential Securities Incorporated.

Respondent Daniel J. Retzinger is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$750.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Dated:

/s/ Victor Elting III, Esq.
Victor Elting III, Esq.
Industry Arbitrator
Chairperson

May 15, 1997

/s/ Susan K. Franz
Susan K. Franz
Industry Arbitrator

May 14, 1997

/s/ Jerome Stern
Jerome Stern
Industry Arbitrator

May 15, 1997