

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Margaret Bracknell,

Claimant,

and

No. 96-02010

Prudential Securities Inc. and Kevin O'Friel,

Respondents and
Third Party Claimants,

G. James Bracknell, Jr.,

Third Party Respondent.

REPRESENTATION OF PARTIES

Claimant, Margaret Bracknell, was represented by Paul Brumley, Esquire located in DeSoto, Texas in initial pleadings and thereafter by R. Kirk Newsom, Esquire of Newsom, Terry & Newsom, L.L.P., located in Dallas, Texas.

Respondents and Third Party Claimants, Prudential Securities Incorporated and Kevin O'Friel, were represented by Donald R. Littlefield, Esquire of Prudential Securities Incorporated, located in Dallas, Texas.

Third Party Respondent, G. James Bracknell, Jr., did not make an appearance in this matter.

CASE INFORMATION

Margaret Bracknell's Statement of Claim was filed on or about May 10, 1996.

Margaret Bracknell's Submission Agreement was signed on January 10, 1996.

Prudential Securities Incorporated and Kevin O'Friel's Statement of Answer and Third Party Claim was filed on or about August 6, 1996.

Prudential Securities Incorporated's Submission Agreement was signed on August 16, 1996 by Donald Littlefield, First V.P. & Assoc. General Counsel of Prudential Securities Inc.

Kevin O'Friel's Submission Agreement, which was handwritten and not notarized, was signed on July 22, 1997 before the undersigned panel of arbitrators.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: July 22, 1997 for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimant, Margaret Bracknell ("Claimant"), brought this action to recover losses allegedly sustained when her broker, who was supervised by Kevin O'Friel at Prudential Securities Incorporated ("Respondents"), failed to execute her sell order in a timely manner.

According to Claimant's Statement of Claim, pursuant to the property division of her divorce with Grady James Bracknell ("Bracknell"), she was awarded one-half of certain stock options. Claimant stated that, because these options were non-transferrable, the court ordered Bracknell to execute the appropriate documentation, which he did, and which was delivered to Claimant's broker at Prudential Securities Incorporated ("Prudential"). Claimant contended that although Bracknell wrote extraneous comments on this documentation, none could be construed as instructions not to execute the sale. Claimant alleged that, despite various verbal and written requests by her and her attorney on February 3, 1995, Respondents failed to follow the sell order. Claimant averred that if the stock option had been exercised and the sale conducted as was ordered, the 22,750 shares of Interdigital Communications Corporation ("IDC") stock would have sold at 12¼. Instead, Claimant asserted, the IDC stock was finally sold on February 7, 1995 at 10 for a loss of \$51,187.50. In addition, Claimant's Statement of Claim alleged damages of \$25,000 from emotional trauma and mental anguish, damages of \$16,037.50 for additional attorney fees to her attorney representing her in her divorce, and damages for attorney fees that she has agreed to pay with respect to this matter.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents stated that as part of the divorce decree, Bracknell was directed by the court to execute the appropriate documentation necessary to effectuate the award of the stock options to Claimant. However, Respondents contended, Bracknell altered the documents, failed to have his signature notarized, and returned only facsimile copies. Respondents further asserted that on February 3, 1995, Claimant's counsel at that time sent a 29 page facsimile, which

included this documentation and a letter explaining that Bracknell had altered the documents in flagrant disregard of the court's order and had forged Claimant's signature to certain documents. According to Respondents, Claimant's counsel informed them that she would contact Bracknell for the original paperwork, so they awaited her response. Instead, Respondents contended, later that day they received another letter from Claimant's counsel threatening to hold Prudential liable if the IDC stock was sold for less than \$11.75 per share. Respondents stated that after decoding the 29-page facsimile and after speaking to Bracknell, Prudential agreed to act without original documentation, but by this time the price of IDC stock had dropped below \$11 per share. Respondents further asserted that Claimant brought enforcement action against Bracknell in their divorce in which she alleged that Bracknell's failure to return the documents in their original form and by making unauthorized changes to the documents caused Prudential's refusal to sell the IDC stock options on February 3, 1996. Respondents stated that this dispute was settled on April 7, 1995. Respondents added the following defenses: Claimant's causes of action are barred in that Claimant has already settled her claims; the claims are barred by the doctrines of waiver, estoppel, and ratification; and the claims are barred because Claimant failed to mitigate her damages.

RELIEF REQUESTED

Claimant, Margaret Bracknell, did not make any formal requests for relief.

Respondents, Kevin O'Friel and Prudential Securities Incorporated, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Third Party Claimants, Prudential Securities Incorporated and Kevin O'Friel, the undersigned arbitrators have determined that Third Party Respondent, G. James Bracknell Jr., has not been properly served with the Third Party Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Third Party Respondent, G. James Bracknell Jr., had not received due notice of the hearing as required under § 10318 of the Code. Third Party Claimants, Prudential Securities Incorporated and Kevin O'Friel, selected to proceed without Third Party Respondent, G. James Bracknell Jr., and not pursue its Third Party Claim against him.

Respondent Kevin O'Friel, prior to the hearing, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, and having signed a submission at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

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. The Statement of Claim is denied in its entirety with prejudice.
2. Any and all references of this matter is hereby ordered to be expunged from the record (CRD) of Kevin O'Friel.
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two hearing sessions x \$500 = \$1,000 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Margaret Bracknell.

The NASD Regulation, Inc. Office of Dispute Resolution shall reimburse Margaret Bracknell the amount of her overpayment in the amount of \$750.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees part of the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Prudential Securities Incorporated.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Prudential Securities Incorporated.

The NASD Regulation, Inc. Office of Dispute Resolution shall reimburse Prudential Securities Incorporated \$100 of its hearing session deposit.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Dan Kile

September 25, 1997

Daniel A. Kile, Esquire
Chairperson
Public Arbitrator

Dated:

/s/ James T. Dougherty

September 30, 1997

James T. Dougherty, Esquire
Panelist
Public Arbitrator

Dated:

/s/ Linda Kelly

August 21, 1997

Linda B. Kelly
Panelist
Industry Arbitrator

Dated: