

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Frank W. Simms, III

96-02054

Name of Respondent

Prudential Securities, Inc.

REPRESENTATION

Claimant Frank W. Simms, III ("Claimant") was represented by James P. McCrocklin, Esq., Louisville, KY.

Respondent Prudential Securities, Inc. ("Respondent") was represented by William W. Allen, Esq., Lexington, KY.

CASE INFORMATION

The Statement of Claim was filed May 13, 1996.

Claimant's Answer To Respondent's Counterclaim was filed July 31, 1997.

Claimant's Amended Statement of Claim was filed on December 16, 1996.

Claimant's Uniform Submission Agreement was signed April 30, 1996.

Respondent's Statement of Answer was filed August 19, 1997.

Respondent's Amended Statement of Answer and Counterclaim was filed February 7, 1997.

Respondent's Uniform Submission Agreement was signed August 16, 1996.

HEARING INFORMATION

Prehearing Dates/Sessions:

December 6, 1996/one session

January 8, 1997/one session

May 8, 1997/one session

August 18, 1997/one session

Hearing Dates/Sessions:

August 25, 1997/two sessions

August 26, 1997/two sessions

August 27, 1997/two sessions

August 28, 1997/one session

Hearing Location:

Seelbach Hotel

Louisville, KY

CASE SUMMARY

Claimant alleged, among other things, that Respondent's failure to take responsibility for the fraudulent nature of a scheme in the sale of certain proprietary limited partnerships damaged Claimant's integrity and reputation. Claimant alleged that Respondent knew, or should have known, that a broker's reputation is directly linked to his ability to succeed in the securities industry. Claimant alleged that from 1980 through 1991, Respondent had Claimant, and other similarly situated brokers, sell approximately eight billion dollars in more than seven hundred different limited partnership offerings to investors throughout the United States. Claimant alleged that the brokers were not informed that a vast majority of the limited partnership interests involved a high risk of loss for the investors, in that the financial success of the investment was largely dependent upon the value of the assets in which the limited partnership invested. Claimant alleged that Respondent's Direct Investment Group ("DIG") falsely represented to the brokers that these partnerships were safe, income-producing investments, and suitable for safety-conscious, conservative small investors. Claimant alleged that the brokers were unaware of the false and material misstatements contained in the promotional materials and information provided to them by DIG. Claimant alleged that on October 20, 1993 Respondent entered into a consent decree with the Securities and Exchange Commission regarding the allegations of fraudulent activities. However, when Respondent paid claims from the settlement fund it was required to set up, Respondent filed amended form U-5s blaming the corporate wrong-doing on the Claimant and other individual brokers even though as part of a settlement with the United States Attorney Respondent admitted to criminal wrong-doing.

Claimant, in the Amended Statement of Claim alleged that Respondent's wrongful actions in its fraudulent practices and representations in the sale of limited partnerships caused Claimant to suffer damage to his business relationship with his customers. Claimant asserted that the damage to his business relationships with his customers resulted in loss of production of commissions and income to Claimant.

In the Statement of Answer to the Counterclaim, Claimant raised the affirmative defenses of a failure to state a cause of action upon which relief may be granted; laches and that Claimant denied knowingly making any false or improper representations to customers.

Respondent denied allegations of defamatory conduct as asserted in the Statement of Claim and the Amended Statement of Claim. Respondent maintained that Claimant terminated his employment with Respondent voluntarily to work for another firm in June 1992. Respondent admitted that it did file amendments to the Claimant's Form U-5, as it was required to do by NASD rules and regulations. Respondent maintained that the amendments were made in good faith and if Claimant's business has declined since he left the employ of Respondent, it was the result of factors and circumstances that had no connection to Respondent. Respondent maintained that Claimant left Respondent's employ after Respondent refused to allow him to continue to conduct options trading in the account of an elderly woman. Respondent maintained that Claimant failed to specify any customers who ceased or reduced their business dealings with him as a result of the publicity of the limited partnerships or who may have held him responsible for the alleged misconduct of his employer.

In the Counterclaim, Respondent alleged that Claimant was responsible for representations made to his customers, at least three of whom who filed claims settled by Respondents for a total of \$477,875.00, regarding the safety of limited partnership investments that were contrary to disclosures contained in the Prospectus and Registration Statement. Therefore, if it is determined that Claimant is guilty of any or all of the conduct Claimant alleged in the Amended Statement of Claim, then Claimant should indemnify Respondent.

RELIEF REQUESTED

Claimant requested damages in a sum to be determined by the panel but no less than \$100,000.00. Claimant also requested that the Counterclaim be denied.

Respondent requested that the Statement of Claim and the Amended Statement of Claim be dismissed and that all fees and costs associated with his proceeding be assessed to Claimant. Respondent also requested an award sufficient to justly apportion responsibility for any harm to Claimant's former customers.

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 originals remain on file with the NASD.

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. That the Statement of Claim and Amended Statement of Claim are denied in their entirety.
2. That the Counterclaim is denied in its entirety.
3. That each party shall bear its own costs and expenses.
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent is assessed a member surcharge of \$300.00. Respondent shall receive credit for the \$300.00 deposit previously submitted for the member surcharge leaving no further member surcharge due.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

4 Prehearing sessions x \$300.00 = \$1,200.00

7 Hearing sessions x \$600.00 = \$4,200.00

Total Forum Fees \$5,400.00

Forum Fees are assessed at \$2,700.00 to Claimant and \$2,700.00 to Respondent. Claimant is to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$2,100.00. Respondent is to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation, leaving Respondent a net assessment due of \$2,400.00.

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

DATE

9/9/97

CONCURRING ARBITRATORS' SIGNATURES

Robert D. Herschman

Robert D. Herschman, Presiding
Public Arbitrator

Carolyn K. Balleisen
Carolyn K. Balleisen
Public Arbitrator

Edward T. Kennedy
Edward T. Kennedy
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 12, 1997

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DATE

9/5/97

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CONCURRING ARBITRATORS' SIGNATURES

Robert D. Herschman, Presiding
Public Arbitrator

Carolyn K. Balleisen
Public Arbitrator

Edward T. Kennedy
Edward T. Kennedy
Industry Arbitrator

9/8/97

Date Decision Served by NASD Regulation: *September 12, 1997*