

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Charles Cerone

96-02353

Name of Respondent

The Prudential Insurance Co. of America

REPRESENTATION

For Claimant Charles Cerone ("Claimant") appeared Joel N. Kreizman, Esq., of the law firm Evans, Osborne, Kreizman & Bonney located in Ocean, New Jersey.

For Respondent Prudential Insurance Co. of America ("Respondent") appeared Burton J. Fishman, Esq., of the law firm Tucker, Flyer & Lewis located in Washington, D.C.

CASE INFORMATION

Claimant's Statement of Claim was filed on May 31, 1996. Claimant's Submission Agreement was signed on May 19, 1996.

Respondent's Statement of Answer was filed on August 2, 1996. Respondent's Submission Agreement was signed on August 22, 1996.

HEARING INFORMATION

| | | | |
|-------------------------|-------------------|---|--------------|
| Hearing Dates/Sessions: | November 24, 1997 | - | Two Sessions |
| | November 25, 1997 | - | One Session |

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that he was an employee of Respondent for ten years, and that he resigned effective December 2, 1994. Claimant also alleged that Respondent breached its employment contract with him by refusing to award him appropriate separation benefits, payment for vacation

and personal absence days, and bonus payments. Claimant further alleged that, due to confusion within the company concerning property and casualty insurance, he lost approximately nine months' ability to write such insurance, as well as his rights to a buy out of his portfolio. Claimant contended that Respondent failed to provide an accounting of his pension renewal rights.

Respondent maintained that the separation benefits Claimant sought were not available to him, since he was a manager in the company. Respondent also maintained that, as a manager, Claimant worked on a "use it or lose it" basis with respect to unused vacation and personal days, and, therefore, was not eligible for payment for unused days. Respondent further maintained that, by electing to continue to sell property and casualty insurance, Claimant chose to forego all other opportunities the company had offered. Respondent asserted that, by electing to resign before the election became effective, Claimant chose to forego the benefits of his own election and pursue his business opportunities outside of the company. Respondent also asserted that its practice is to provide bonuses only to individuals who complete the year and are present to receive the bonus when it is disbursed.

RELIEF REQUESTED

Claimant requested that the arbitrators enter an award: for severance in the amount of \$25,000.00; for unused vacation and absence days in the amount of \$3,500.00; for Claimant's property and casualty buy-out in the amount of \$20,600.00; for bonuses for \$4,000.00; and requiring Respondent to account to him for his pension renewal rights. Claimant further requested interest and costs of this arbitration.

Respondent did not specifically request relief.

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 remains 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. Respondent is hereby liable and shall pay to Claimant the sum of \$33,000.00 in compensatory damages.
2. Each party shall bear its respective costs, including attorneys' fees, except that Respondent is hereby liable and shall pay Claimant the sum of \$600.00 to reimburse Claimant for the hearing session deposit paid to NASD Regulation, Inc.

3. All other requests for relief are hereby denied.

FORUM FEES


Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously paid by Claimant and the \$200.00 member surcharge, and \$600.00 postponement fee previously paid by Respondent. In addition, the arbitrators have assessed the following forum fees:

$$3 \text{ hearing sessions} \times \$600.00 = \$1,800.00$$

Respondent be and hereby is liable for the sum of \$1,800.00, representing the total amount of total forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, Respondent shall pay the balance of \$1,200.00 to NASD Regulation, Inc. and \$600.00 to Claimant as provided in the "Award" section above.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures



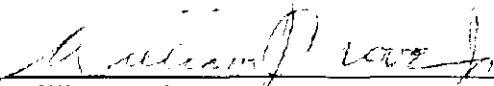
William J. Crowe, Jr., Esq.
Chairperson-Industry Arbitrator

Clifford J. Friedman
Industry Arbitrator

Fred Shinagel
Industry Arbitrator

Date of decision: January 13, 1998

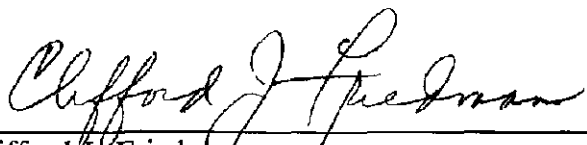
I, William J. Crowe, Jr., Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



William J. Crowe, Jr., Esq.

Arbitrators' Signatures

William J. Crowe, Jr., Esq.
Chairperson-Industry Arbitrator

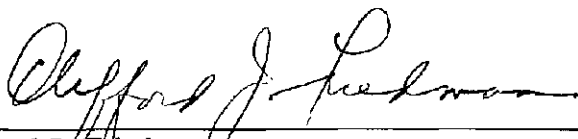


Clifford J. Friedman
Industry Arbitrator

Fred Shinagel
Industry Arbitrator

Date of decision: January 13, 1998

I, **Clifford J. Friedman**, 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.

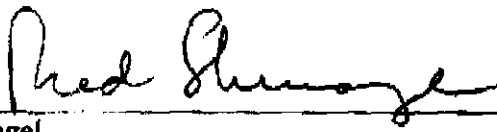


Clifford J. Friedman

Arbitrators' Signatures

William J. Crowe, Jr., Esq.
Chairperson-Industry Arbitrator

Clifford J. Friedman
Industry Arbitrator



Fred Shinagel
Industry Arbitrator

Date of decision. January 13, 1998

I, Fred Shinagel, 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.



Fred Shinagel