

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Estate of Thomas J. Witschel

96-02355

Name of Respondents

The Prudential Insurance Co. of America
Pruco Securities Corporation

REPRESENTATION

For Claimant Estate of Thomas J. Witschel ("Claimant") appeared Howard Breindel, Esq. of Breindel & Ferstendig, P.C. located in New York, NY.

For Respondent Pruco Securities, Inc. ("Pruco") appeared Andrew Porter, Esq. of Sonnenschein Nath & Rosenthal located in New York, NY.

For Respondent The Prudential Insurance Company of America ("Prudential") appeared Andrew Porter, Esq. of Sonnenschein Nath & Rosenthal located in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on June 3, 1996. Claimant's Submission Agreement was signed on May 29, 1996.

A Statement of Answer was filed by Respondent Pruco on July 26, 1996. Respondent Pruco's Submission Agreement was signed on July 24, 1996.

A Statement of Answer was filed by Respondent Prudential on July 26, 1996. Respondent Prudential's Submission Agreement was signed on July 26, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	March 13, 1997	One Session
Hearing Dates / Sessions:	March 20, 1997	Two Sessions
	March 21, 1997	Two Sessions
	April 28, 1997	Two Sessions
	April 29, 1997	Two Sessions
	June 2, 1997	Two Sessions

The hearings were held at the NASD Regulation, Inc. offices in New York City.

CASE SUMMARY

From approximately November, 1993 until on or about May 19, 1995, the late Thomas J. Witschel, Jr. was employed by Respondent Prudential as an insurance agent in its Matawan, New Jersey office. In May, 1995, Respondent Prudential accused the late Mr. Witschel of improperly signing certain customer change forms in connection with the sale or maintenance of certain insurance policies or other Prudential products; the late Mr. Witschel denied the accusations. Claimant alleged that on or about May 19, 1995, the late Mr. Witschel made an agreement (the "agreement") with Mr. Steven Marzioto, General Manager of the Matawan office, on behalf of Respondent Prudential, providing that if the late Mr. Witschel resigned his employment with Respondent Prudential, Prudential would not retain, disseminate or disclose the accusations made by Respondent Prudential. On or about May 19, 1995, the late Mr. Witschel delivered to Mr. Marzioto a letter of resignation and a letter confirming the agreement.

On or about June, 1995, the late Mr. Witschel made arrangements to begin working as an insurance agent for Provident Mutual Life Insurance; his employment was contingent upon review of his NASD file. On or about July 6, 1995, the late Mr. Witschel learned the contents of the Form U-5 Uniform Termination Notice for Securities Registration ("Form U-5") submitted by Respondent Prudential to the NASD. The late Mr. Witschel alleged the information supplied to NASD by Respondent Prudential was false and misleading, and, as a result, he was unable to secure a position with Provident Mutual Life Insurance due to this incorrect information.

Claimant alleged that the late Mr. Witschel contacted, via letter dated August 1, 1995, Respondent Prudential and demanded that Prudential amend and correct the Form U-5 and comply with the agreement. Claimant alleged that, in response, via letter dated August 11, 1995, Respondent conceded that the Form U-5 was incorrect and stated that it would be appropriately corrected. Claimant contended that Respondent Prudential, did not, however, amend the Form U-5. Mr. Witschel died unexpectedly on August 24, 1995. Mr. Witschel died with virtually no assets and was survived by his wife, Nancy A. Witschel and his three-year-old daughter, Lydia Rae Witschel.

Claimant alleged defamation against Respondent Prudential for including false information in the Form U-5. Claimant contended that as a result of the defamation, the late Mr. Witschel was not hired by Provident Mutual. Claimant alleged that as a result of Respondent Prudential's defamation, the late Mr. Witschel was required to pay over \$1,000 to Prudential to continue his health insurance coverage. Also claimant contended that, as a result of the defamation, the late Mr. Witschel did not earn commissions on the sale of life insurance for several months, and did not have life insurance as an employee of Provident Mutual.

Claimant contended that Respondent Prudential breached its agreement by filing the Form U-5 incorrectly on June 5, 1995. Claimant contended that if Respondent Prudential had not breached the oral agreement, the late Mr. Witschel would have had group life insurance and health insurance as an employee of Provident Mutual, and would have earned commissions on the sale of life insurance and similar policies from at least July 6, 1995 to August 24, 1995.

Claimant further alleged that Respondent Prudential intentionally and maliciously interfered with the late Mr. Witschel's prospective economic advantage and prospective employment opportunities. Claimant alleged that Respondent Prudential misrepresented the termination agreement to the late Mr. Witschel, breached its covenant of good faith and fair dealing by preventing the late Mr. Witschel from working for another insurance company, and have withheld commissions earned by the late Mr. Witschel in the amount of approximately \$8,000.

Respondents Prudential and Pruco maintained that the late Mr. Witschel committed a serious violation of strict company rules concerning sales practices, and, when he refused to resign, he was terminated. Respondent Prudential maintained that there had been no oral agreement between the late Mr. Witschel and Mr. Marziotto, and that Mr. Marziotto refused to accept the letter confirming the agreement on May 8, 1995. Upon the late Mr. Witschel's termination, Respondent Prudential processed the Form U-5 as required, noting that Claimant was "discharged," and disclosed that the late Mr. Witschel had been the subject of two customer-initiated complaints alleging fraud. Respondent Prudential claimed that the late Mr. Witschel advised Respondent Prudential that the Form U-5 did not reflect circumstances truly, and Respondent Prudential agreed to amend the Form U-5 to reflect that Mr. Witschel was permitted to resign.

Respondents maintained, with respect to Claimant's breach of contract claim, that no such oral agreement was ever made. Moreover, even if any such agreement had been made, Respondent Prudential maintained it could not be enforced because it would violate Prudential's strict obligation to NASD to disclose fully and accurately all consumer-initiated complaints against its registered representatives.

Respondents maintained that Claimant's claim for defamation is factually infirm, since disclosures made on Claimant's Form U-5 were absolutely true.

Respondents maintained that Claimant's claim for damages in an amount equal to the alleged life insurance proceeds Claimant may have collected as a participant in the Provident Mutual group life plan is untenable, since the late Mr. Witschel could have purchased insurance after leaving Prudential and thereby mitigated his damages.

RELIEF REQUESTED

Claimant requested actual damages of \$158,000, punitive damages of \$316,000, commissions due in the amount of \$8,000, costs and expenses of this action, including reasonable attorneys' fees, and any other further relief as the panel deems just.

Respondents Pruco and Prudential requested the Statement of Claim be dismissed in its entirety without prejudice.

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.

The panel denied the Respondents' Motion to Dismiss the Statement of Claim.

The panel denied the Respondents' Motion to Deny panel jurisdiction over claimant's claims regarding unpaid commissions.

The panel denied the Respondents' Motion to Dismiss claimant's breach of contract claim.

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. Claimant's relief requests are hereby denied in their entirety.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee and have assessed the following forum fees:


1 Pre-hearing Session x \$300.00	= \$ 300.00
10 Hearing Sessions x \$750.00	= \$7,500.00
Total Forum Fees	= \$7,800.00

Claimant be and hereby is liable and shall pay the sum of \$3900.00 representing one half of the forum fees assessed. Claimant has already deposited the sum of \$750.00, therefore claimant owes NASD Regulation, Inc. the sum of \$3150.00.

Respondents Pruco and Prudential be and hereby are jointly and severally liable for the sum of \$3900.00 representing one half of the forum fees assessed. Respondents jointly and severally owe NASD Regulation, Inc. the sum of \$3900.00.

Fees are payable to the NASD Regulation, Inc.

ARBITRATOR'S SIGNATURES



Fred S. Pieroni
Public Chairperson

I, Fred S. Pieroni, 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 S. Pieroni
Public Chairperson

Date of Decision: July 14, 1997

ARBITRATOR'S SIGNATURES

C. Anthony Bell
C. Anthony Bell

I, C. Anthony Bell, 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.

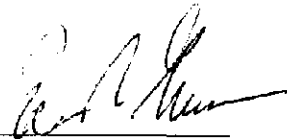
C. Anthony Bell
C. Anthony Bell

Date of Decision: July 14, 1997

ARBITRATOR'S SIGNATURES

James R. Greene

I, James R. Greene, 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.



James R. Greene

Date of Decision: July 14, 1997
