

NASD REGULATION, INC.  
AWARD

---

In the Matter of the Arbitration Between

Name of Claimant

Robert L. Young

vs.

Case No.  
96-02505

Name of Respondents

The Prudential Insurance Company of America, Inc.,  
individually and as Administrator of the  
Prudential Disability Benefits/Group Insurance, Plan

---

**REPRESENTATION**

For Claimant Robert L. Young ("Claimant") appeared Lawrence P. Cohen, Esq. and Kevin M. Hahn, Esq., of the firm Courter, Kobert, Laufer & Cohen, P.C., located in Hackettstown, New Jersey.

For Respondent The Prudential Insurance Company of America, Inc. ("Respondent") appeared Alan E. Kraus, Esq. and Jeffrey M. Siminoff, Esq., of the firm Riker, Danzig, Scherer, Hyland & Perretti LLP, located in Morristown, New Jersey.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on June 10, 1996.  
Claimant's Submission Agreement was signed on June 27, 1996.  
Claimant's Amended Statement of Claim was filed on September 25, 1997.  
Claimant's Memorandum in Support of Request to Have the Panel Decide Certain Issues as A Matter of Law Without a Hearing was filed on March 17, 1998.  
Claimant's Opposition to Respondent's Motion to Dismiss was filed on March 25, 1998.  
Claimant's Opposition to Respondent's Motion to for a Directed Verdict was filed on September 25, 1998.

Respondent's Statement of Answer was filed on September 6, 1996.  
Respondent's Submission Agreement was signed on September 4, 1996.  
Respondent's Amended Statement of Answer was filed on November 10, 1997.  
Respondent's Motion to Dismiss and Memorandum in Support of Motion to Dismiss Counts

Three through Nine of Claimant's Amended Statement of Claim was filed on March 17, 1998. Respondent Opposition to Claimant's Motion for Judgment on ERISA Claims was filed on March 26, 1998.

Respondent's Memorandum of Law in Support of Motion for a Direct Verdict on Claimant's Remaining Claims was filed on September 14, 1998.

Respondent's Additional Memorandum in Support of Motion to Dismiss Count Nine of Claimant's Amended Statement of Claim was filed on June 16, 1998.

### **HEARING INFORMATION**

Pre-Hearing Conferences:	September 29, 1997	-	1 session
	March 2, 1998	-	2 sessions
	March 30, 1998	-	1 session
	April 14, 1998	-	1 session
	September 3, 1998	-	1 sessions
	September 10, 1998	-	<u>1 session</u>
Hearing Dates/Sessions:	April 1, 1998	-	2 sessions
	May 14, 1998	-	2 sessions
	May 15, 1998	-	2 sessions
	June 19, 1998	-	2 sessions
	July 7, 1998	-	2 sessions
	July 8, 1998	-	2 sessions
	September 14, 1998	-	2 sessions
	September 15, 1998	-	2 sessions
	September 16, 1998	-	2 sessions
	October 7, 1998	-	2 sessions
	October 8, 1998	-	2 sessions
	December 21, 1998	-	2 sessions
	December 22, 1998	-	<u>2 sessions</u>

The pre-hearing conferences were conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that, in 1991, as part of internal restructuring, he was offered a position at Respondent's office located in Warren Hills, New Jersey. Claimant further alleged that he was reluctant to accept the position, but his immediate supervisor, Fred Fabozzi ("Fabozzi"), assured him in writing that there would be fine opportunities for favorable progress. Claimant contended that Respondent's representations of "fine opportunities" was intentionally misleading since, prior to his acceptance of the position, Respondent did not disclose its knowledge that members of its sales force at Warren Hills were involved in illegal sales practices such as churning.

Claimant asserted that, when he discovered the unlawful churning practices, he informed Respondent, who refused to address the problem in any meaningful way. Claimant maintained that, as a result of Respondent's refusal to rectify the churning problem, in addition to other employment pressures resulting from his outspokenness, he became increasingly depressed and psychologically unable to perform his employment obligations. Claimant stated that on October 5, 1994, he began receiving disability benefits from Respondent pursuant to the short-term Disability Benefits/Group insurance Plan.

Claimant maintained that, on December 5, 1994, he was notified that he was being placed on probation by Fabozzi as a result of three prior complaints filed against him in 1991, 1992, and 1993 for alleged behavior towards the staff. Claimant asserted that each incident had been investigated and was acknowledged by Fabozzi as being baseless and without merit. Claimant contended that Respondent subsequently terminated his employment on February 28, 1995. Claimant maintained that he repeatedly sent letters to Respondent objecting to his termination and that the underlying reason for his termination was retaliation for his whistleblowing. Claimant asserted that he was denied the fair opportunity to defend himself, contrary to recognized internal policy. Claimant further asserted that his business reputation was destroyed as a result of various newspaper articles that reported on the alleged cause of his termination. Claimant stated that he was notified on March 2, 1995 that he was no longer eligible to receive disability, effective on the February 28, 1995 termination date. Claimant stated that, after he appealed Respondent's withdrawal of benefits, on March 24, 1995, the State of New Jersey mandated that he receive temporary disability. Claimant contended that, pursuant to the express provision of Respondent's Plan and Summary Plan Documents ("Plan"), he was entitled to receive his short-term disability benefits for a full fifty-two weeks and, upon expiration of the short-term benefits, he was legally entitled to receive long-term disability benefits because he remains totally disabled. Claimant alleged that Respondents wrongly denied him such benefits under the Employee Retirement Income Security Act (ERISA).

Respondent maintained that Claimant's allegations should be denied because they are time barred, as well as being barred by the doctrines of collateral estoppel and res judicata. Respondent also maintained that Claimant, by his own admission, did not file a timely appeal to its Employee Benefits Plans Division. Respondents asserted that, on the merits, Claimant's ERISA claims should be rejected because he was rightfully terminated under the terms of its Summary Plan Description for well documented cases of egregious misconduct. Respondent contended that Claimant's management at the Warren Hills office was characterized by harassment, discrimination and public humiliation of low-producing or otherwise disfavored sales agents in his office and most egregiously, by unlawful harassment based upon the sex, religion, and nationality of one agent in his office. Respondents alleged that Claimant cannot prove that he was wrongfully discharged or that his benefits were terminated in retaliation for his alleged whistleblowing.

## **RELIEF REQUESTED**

Claimant requested the following demands for relief:

A. On Claimant's First Cause of Action, awarding Claimant past due short-term disability benefits in the amount of \$76,750.00, less any amounts which may properly be deducted in accordance with the Plan documents or otherwise in accordance with law;

B. Ordering Respondent to immediately pay the aforementioned amount of past due short-term disability benefits to the Claimant together with interest thereon in an amount to be determined by the Arbitrators from October 5, 1995 through the date of the Arbitrators' decision in this matter;

C. On Claimant's Second Cause of Action, awarding Claimant past due long-term disability benefits in the amount of \$8,407.38 per month from October 5, 1995 through the date of the Arbitrators' decision in this matter, less any amounts which may properly be deductible in accordance with the Plan documents or otherwise in accordance with law;

D. Ordering Respondent to immediately pay to the Claimant the aforementioned past due amount of long-term disability benefits, together with interest thereon in an amount to be determined by the Arbitrators from October 5, 1995 through the date of the Arbitrators' decision in this matter;

E. Ordering Respondent to immediately commence payments to the Claimant in the amount of \$8,407.38 per month, less any amounts which may properly be deducted in accordance with the Plan documents or otherwise in accordance with law, as and for Claimant's long-term disability monthly benefit entitlement and to continue making such payments for so long as Claimant remains disabled or until Claimant reaches his date of retirement at age 65 as defined in the Plan;

F. As to both the First and Second Causes of Action, Claimant seeks a permanent and mandatory injunction, enjoining and restraining the Respondent from further violations of its Disability Benefits/Group Insurance Plan and/or any further violations of ERISA with respect to Claimant's rights thereunder.

G. Awarding Claimant attorney's fees filing fees and all other reasonable costs incurred in pursuing this matter, as expressly permitted under the provision of ERISA;

H. On Claimant's Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Cause of Action, Claimant seeks an award of compensatory, consequential, punitive and exemplary damages in its favor and against said Respondent, together with interest and costs of suit; and

I. Awarding and granting Claimant such other and further relief as the arbitrators may deem just and proper.

Respondent requested the following:

1. Dismissing the Amended Statement of Claim, with prejudice;
2. Awarding it costs and attorneys' fees; and
3. Such other and further relief as the Panel deems just and proper.

### **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 NASD Regulation, Inc.

Claimant voluntarily withdrew his claim with reference to the Third Count (discrimination in violation of New Jersey Law Against Discrimination), Fourth Count (common law violation of unlawful discharge), Seventh Count (intentional infliction of emotional distress), and Eighth Count (negligent infliction of emotional distress) of the Amended Statement of Claim.

Prior to the hearing, the Panel dismissed Counts Five (unlawful breach of entire employment agreement) and Six (breach of good faith and fair dealing) of the Amended Statement of 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. Respondent's Motion for a Directed Verdict on Claimant's Remaining Claims (Counts One, Two, and Nine) is hereby granted;
2. All other claims for relief are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Respondent has paid NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

### FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee paid by Claimant and have assessed the following Forum Fees:

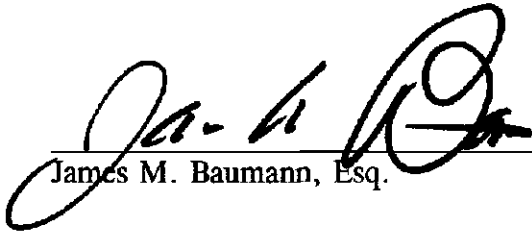
7 Pre-Hearing Conferences		
(3 with Chair x \$300.00)	-	\$ 900.00
(4 with full panel x \$1,000.00)	-	\$ 4,000.00
26 Hearing Sessions x \$1,000.00	-	\$26,000.00
Total Forum Fees	=	\$30,900.00

1. Claimant be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$15,450.00, representing half of the forum fees assessed. Claimant previously \$1,500.00 with NASD Regulation, Inc. and, therefore shall pay the remaining \$13,950.00 balance to NASD Regulation, Inc.
2. Respondent be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$15,450.00, representing half of the form fees assessed.

**ARBITRATION PANEL**

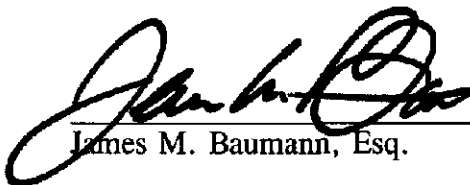
James M. Baumann, Esq.	-	Public Chairperson
Anne Cugliani	-	Public Arbitrator
James R. Madan	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
James M. Baumann, Esq.

Date of decision: March 16, 1999

I, **James M. Baumann, 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.

  
James M. Baumann, Esq.

**ARBITRATION PANEL**

James M. Baumann, Esq.	-	Public Chairperson
Anne Cugliani	-	Public Arbitrator
James R. Madan	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Anne Cugliani

Date of decision: March 16, 1999

I, **Anne Cugliani**, 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.

  
Anne Cugliani