

AWARD

NASD Regulation, Inc.
Office of Dispute Resolution

IN THE MATTER OF ARBITRATION BETWEEN

PRUDENTIAL SECURITIES INCORPORATED,

Claimant

v

Case Number 96-02933

JAMES E. VONDERGOLTZ,

Respondent

REPRESENTATION OF PARTIES

Claimant, Prudential Securities Incorporated was represented by Steven P. Gomberg, Esq. of Gomberg, Kane & Fischer, Ltd., Chicago, Illinois.

Respondent, James E. Vondergoltz was represented by Leonard J. Meyer, Esq. of Zimmerman, Axelrad, Meyer, Stern & Wise, P.C., Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 9, 1996. Submission Agreement of Claimant was signed on July 1, 1996 by Gabriel Loubier, Esq., First Vice President and Deputy regional Counsel. The Amendment to the Statement of Claim was filed on or about September 16, 1996. The Reply of Claimant to the Respondent's Counterclaim was filed on or about October 8, 1996..

The Statement of Answer and Counterclaim was filed by Respondent on or about August 30, 1996. Submission Agreement of Respondent was signed on August 30, 1996.

HEARING INFORMATION

A pre-hearing conference was held on: April 7, 1997 for one (1) session.

The hearing was held on: April 15, 1997 for two (2) sessions; and
April 16, 1997 for two (2) sessions.

The hearing was held in : Houston, Texas.

CASE SUMMARY

Claimant, Prudential Securities Incorporated ("Claimant"), alleged that the Respondent, James E. Vondergoltz ("Respondent"), entered into a Promissory Note on January 5, 1994, (the "Note"), in which by its terms, Respondent agreed to repay the sum of \$62,927.00 in forty-three annual monthly installment payments of \$1,463.42 beginning with May, 1994 and ending with November, 1997 plus interest at the rate of 6% per annum. Claimant alleged that the Note provided for the payment of the entire amount due in the event of the termination for any reason of employment during the term of the Note. In addition, Claimant alleged Respondent was not entitled to any unpaid transitional compensation if Respondent resigned or was terminated for cause. As alleged, Respondent was terminated for cause from Prudential on October 20, 1994 and there was a remaining balance due on the Note in the amount of \$48,946.48, arrears in the amount of \$2,290.01 plus interest. On or about March 26, 1996, Claimant tendered a demand to Respondent for the balance due under the Note plus interest. Claimant alleged that to date Respondent had failed and refused to honor his obligation to Prudential Securities, Incorporated under the Note.

Respondent filed an Answer and Counterclaim on or about August 30, 1996. In his Answer and Counterclaim, Respondent alleged that Claimant wrongfully terminated him in violation of the American With Disabilities Act of 1990. Respondent also alleged that Claimant was liable to him for Intentional Infliction of Emotional Distress.

Claimant filed a Reply to Respondent's Answer and Counterclaim on October 8, 1996, denying any allegations of wrongdoing on the part of Prudential.

RELIEF REQUESTED

Claimant requested the entry of an award against Respondent, James E. Vondergoltz for a total of \$87,688.89, consisting of the following:

- a) The principal balance due and owing under the Note in the amount of \$48,946.48;
- b) Interest on the balance due and owing under the Note from 11/01/1994 to 04/15/1997 at the contract rate of 6% per annum (\$8.04 per day) in the amount of \$7,211.88;
- c) Arrears on the Note in the amount of \$2,290.01;
- d) Interest on the balance due and owing under the Note at the contract rate of 6% (\$8.04) per day from 04/15/1997 to date of payment, and;
- e) Attorneys fees in the amount of \$25,599.50 and costs in the amount of \$3,641.52 as agreed to under the terms of the Note;

Respondent requested the entry of an award against Claimant, Prudential Securities, Inc. in an undisclosed sum in his Counterclaim. At the hearing, Respondent requested that the panel award him lost earnings in the sum of \$57,620.00. He also requested that he be reimbursed for insurance premium payments he would not have been required to make but for the alleged wrongful termination in the sum of \$3,914.00. He further sought recovery of accountant fees in the sum of \$5,000.00 and attorney's fees and expenses in amount of \$20,103.77. The attorney fee amount he requested included the filing fees paid by the Respondent in connection with his statement of claim in the sum of \$1,100. The Respondent also requested that in the event the panel found that the termination by Claimant of Respondent's employment in violation of Federal law, that the panel also conclude that it would be unfair unjust and perhaps illegal to permit the Claimant to claim that its termination of Respondent's employment (in violation of law) was an event of default under the promissory note (which was the subject of Claimant's claims); therefore, the Claimant should not be permitted to declare the promissory note in default and pursue any remedies otherwise available to the Claimant. The Respondent further requested at the hearing that punitive damages be imposed against the Claimant as made available through the Americans With Disabilities Act. Respondent requested at the hearing that the Claimant be ordered to amend its U-5 filing regarding Respondent to describe his separation from employment with Claimant as a voluntary resignation. Alternatively, Respondent requested the Claimant be ordered to amend Respondent's U-5 to reflect that the reason he was discharged was because he was injured and unable to produce at the levels expected of him by Prudential Securities.

OTHER MATTERS

At the hearing, testimony was introduced as to an unpaid commission due under an annuity contract sold by Respondent prior to termination where the commission payment matured at 12/30/94 but was not otherwise paid or credited to the Respondent. The commission was \$5,228.98 and the parties stipulated that giving effect to this commission that the aggregate balance due under the note at that time was \$58,457.32.

On or about April 10, 1997, Claimant, Prudential Securities, Incorporated filed a motion to dismiss Respondent's affirmative defenses and counterclaim. At the hearing, the arbitrators heard oral arguments on the motion and decided to deny the motion.

At the hearing, Respondent orally requested that he be permitted to amend his Counterclaim to include the unpaid \$5,228.98 commission. The arbitrators granted the request.

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. Respondent, James E. Vondergoltz is liable for and shall pay to Claimant, Prudential Securities, Incorporated the sum of \$58,457.32 with simple interest of 6% per annum commencing from the date of this award until paid;
2. Other than as provided herein, the panel enters a take nothing award to Respondent, James Vondergoltz against Claimant, Prudential Securities, Incorporated on his Counterclaim;
3. With the exception of forum fees which are addressed below, the parties shall bear their own costs including legal expenses; and
4. Any relief not specifically awarded herein is hereby denied in its entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300 for each pre-hearing conference. There was one (1) pre-hearing conference x \$300 plus there were four (4) hearing sessions x \$600.00 = \$2,700.00 in total forum fees. Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is a 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 § 10205(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously submitted by Claimant, Prudential Securities, Incorporated. The NASD Regulation, Inc. Office of Dispute Resolution shall also retain the \$300.00 member surcharge paid by Claimant, Prudential Securities, Incorporated pursuant to § 10333 of the Code.

In accordance with § 10205(c) of the Code, Claimant, Prudential Securities, Incorporated is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$750.00 in additional forum fees.

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Pursuant to § 10205 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit previously submitted by Respondent, James E. Vondergoltz.

In accordance with § 10205 of the Code, Respondent, James E. Vondergoltz is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750.00 in additional forum fees.

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

Arbitrators' Signatures:

Dated:

Donald H. Fidler, Esq.
Donald H. Fidler, Esq.
Public Arbitrator
Chairman

June 3, 1997

Bertrand C. Moser, Esq.
Bertrand C. Moser, Esq.
Public Arbitrator
Panelist

June 4, 1997

John M. Greer
John M. Greer
Industry Arbitrator
Panelist

June 2, 1997

For NASD use only:
Date served: June 5, 1997