

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Philip A. Goldstein

96-03342

Name of Respondent

Prudential Securities Inc.

REPRESENTATION

Claimant Philip A. Goldstein ("Claimant") was represented by Walter L. Baumgardner, Esq., Musilli, Baumgardner, Wagner & Parnell, St. Clair Shores, MI.

Respondent Prudential Securities, Inc. ("Respondent") was represented by Richard Martens, Esq., Boose Casey Ciklin Lubitz Martens McBane, West Palm Beach, FL.

CASE INFORMATION

The Statement of Claim was filed August 13, 1996.

Claimant's Uniform Submission Agreement was signed August 6, 1996.

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

Respondent did not file an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Dates/Sessions: December 8, 1997/one session
December 9, 1997/two sessions
December 10, 1997/two sessions

Hearing Location: Vincent Varallo Associates
Philadelphia, PA

Hearing Dates/Sessions: March 31, 1998/two sessions
April 1, 1998/two sessions
April 2, 1998/one session

Hearing Location: Doubletree Hotel
Philadelphia, PA

CASE SUMMARY

Claimant alleged that Respondent submitted Form U-4s and Amended Form U-5s to the NASD in which it alleged that Claimant had received a Client initiated complaint for damages in excess of \$10,000.00.

Claimant further alleged that the Form U-4s and Form U-5s resulted from the sale of limited partnership interests which were the subject of numerous class action lawsuits and regulatory sanctions against Respondent, in which Claimant was not named as a Defendant. Claimant asserted that Respondent for many years denied in the media that there was anything wrong with limited partnerships and it was only after the SEC forced Respondent to establish a reparation fund, that the truth about all the problems with the limited partnerships was disclosed. Claimant alleged that Respondent used the Form U-4s and Form U-5s as a means to shift the conduct from Respondent to the individual brokers such as Claimant.

Claimant alleged that the filing of these Form U-4s and Form U-5s resulted in difficulties in the transfer of Claimant's license and registration in various states, along with the inability to obtain employment at major brokerage firms. Claimant further alleged that there is no privilege for documents which contain false statements, even if they are required to be filed with the NASD.

Respondent denied the allegations contained in the Statement of Claim. Respondent maintained that Claimant was making Respondent a scapegoat for his own bad business decisions and professional failures. Respondent further maintained that Claimant's counsel previously represented Claimant's complaining clients. It was these complaints which resulted in the Amended Form U-5 filings by Respondent. Respondent contended Claimant was a broker with many years experience and a tendency to sell the product available with the highest commission. Respondent asserted that part of the reduction in Goldstein's income was due to the illiquid nature of limited partnerships, which limited reinvestment opportunities. Respondent asserted that another factor in Claimant's business decline was his voluntary decision to move to Merrill Lynch where a number of his clients, including a large institutional client, did not follow.

Respondent maintained that the defamation claims arising from Respondent's regulatory reporting are without basis as Respondent had an absolute privilege to make the statements it did; that it had a qualified privilege that could only be overturned on a showing of malice; that the statements were required to be made and therefore an immunity attached; that the statements that were made were true; that the statute of limitations for any of the causes of action had expired; and that the statements made by Respondent were truthful and truth is a defense to a defamation action.

RELIEF REQUESTED

Claimant requested \$4,800,000.00 in actual and punitive damages; pre-award interest; attorneys' fees; and expungement of every one of the amended Form U-5s.

Respondent requested that all claims be dismissed.

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.

Respondent did not file with the NASD Regulation, Inc. Office of Dispute Resolution to properly executed submission to arbitrate but is required to submit to arbitration pursuant to Rule 10301 of the

NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Statement of Claim is denied; and
2. That the claim for punitive damages is denied; and
3. That Claimant's request for expungement of the amended Form U-5s is denied; and
4. That each party shall bear its own costs and expenses with the exception of the Forum Fees as specified below; and
5. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent is assessed a Member Surcharge of \$500.00 which is due.

Pursuant to Rule 10319 of the Code, Claimant has been assessed a postponement fee of \$1,000.00 which is due.

FORUM FEES

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed:

10 hearing sessions x \$1,000.00 = \$10,000.00

Forum Fees are assessed at \$5,000.00 to Claimant and \$5,000.00 to Respondent.

Claimant shall receive a credit for the \$1,000.00 hearing session deposit but has a postponement fee of \$1,000.00 due, leaving net fees due from Claimant of \$5,000.00.


Respondent has Forum Fees of \$5,000.00 plus the \$500.00 member surcharge, leaving net fees due from Respondent of \$5,500.00.

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

DATE _____

C/12/75

CONCURRING ARBITRATORS' SIGNATURES


Joseph R. Lally, Chairman
Public Arbitrator

Jay D. Goldstein
Public Arbitrator

Charlton Yarnall, II
Industry Arbitrator

Date Decision Served by NASD Regulation: June 24, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

12 June 1998

Joseph R. Lally, Chairman
Public Arbitrator

Jay D. Goldstein
Jay D. Goldstein
Public Arbitrator

[rec'd 10 June 98]

Charlton Yarnall, II
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 24, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

Joseph R. Lally, Chairman
Public Arbitrator

Jay D. Goldstein
Public Arbitrator

6/11/98


Charlton Yarnall, II
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 24, 1998