

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities Inc

96-03417

Name of Respondent

John Bruggman

REPRESENTATION

For Claimant Prudential Securities, Inc. ("Prudential") appeared Peter von Maur, Esq., in house counsel for Prudential Securities, Inc. located in New York, New York.

For Respondents Invest Financial Corp. ("Invest") and John Bruggman ("Bruggman") appeared George Covington, Esq., of the law office Kennedy, Covington, Loddell, & Hickman located in Charlotte, North Carolina.

CASE INFORMATION

The Statement of Claim was filed on August 30, 1996.

Claimant's Submission Agreement was signed on August 07, 1996.

A Joint Statement of Answer was filed by Respondents on November 27, 1996.

Respondent Invest's Submission Agreement was signed on December 17, 1996.

Respondent Bruggman's Submission Agreement was signed on December 18, 1996.

HEARING INFORMATION

Hearing Date/Sessions:

August 11, 1997

Two Sessions

The hearings were conducted at the Embassy Suites Hotel in Raleigh, North Carolina.

CASE SUMMARY

Claimant stated that Respondent Bruggman began employment with them in January 1993, entering into the Financial Advisor in Training Program ("FAIT"). Claimant stated that upon entering the program Bruggman signed the FAIT Agreement which provided that: 1) any disputes arising under the Agreement would be resolved through arbitration, either NYSE or NASD; 2) the customer lists and other information provided to the Respondent were confidential and the sole property of Claimant; 3) upon leaving employment with Claimant he would not solicit Claimant's existing clients within a 100 mile radius of the office in which he was employed; 4) he would not be affiliated in any way with an outside business entity or pursue without written approval from Claimant; 5) Claimant would pay for the costs

and expenses required by Bruggman to become a registered representative, and that if he left Claimant's employ less than four years after passing his Series 7 he would compensate Claimant for its damages and unrecouped costs and expenses; and 6) Claimant would be entitled to damages and/or injunctive relief if Bruggman violated any relevant portions of the agreement. Claimant alleged that when Bruggman finished training he was given client accounts to start and over time acquired other accounts.

Claimant stated that on or about July 29, 1996, Bruggman resigned from his employment with them to take a position with Invest. Claimant alleged that in the weeks before Bruggman resigned he misappropriated confidential customer information and solicited Claimant's clients to transfer with him to Invest. Claimant alleged that Bruggman failed to repay Claimant the amount owed to them under the FAIT Agreement and he refused to return confidential customer information.

Respondent Bruggman maintained that prior to working for Claimant he was trained for and received his Series 7 while working with his previous employer, Olde Discount. Therefore, when Respondent began working for Claimant he was already a licensed broker. Bruggman maintained that he spoke to a small number of his clients before his resignation, explaining that he was leaving for personal reasons and recommended a colleague who could handle their accounts. Bruggman maintained that he did not violate the FAIT Agreement. Bruggman stated that in August 1996, he began employment with Respondent Invest. Respondent Invest maintained that they reminded Bruggman that he could not utilize confidential information, including former customers, relating to his employment with Claimant. Respondents maintained that upon information and belief none of his accounts from Claimant have transferred to Invest and they have not improperly solicited any former customers of Bruggman's.

Respondents offered the following affirmative defenses: 1) The FAIT Agreement is unenforceable and against public policy as an illegal restrictive covenant. 2) The FAIT Agreement also fails for lack of consideration; and 3) Claimant has not sought to enforce the FAIT Agreement against Invest and other brokers who similarly left Claimant to join Invest, and therefore, Claimant is estopped from doing so in this instance.

RELIEF REQUESTED

Claimant requested the following:

1. the sum of \$4,882.00 due and owing under the FAIT Agreement;
2. the cost of collection and of this proceeding, including attorney's fees as agreed to under paragraph 4 of the FAIT Agreement or as otherwise authorized by applicable law;
3. injunctive relief for Bruggman's breach of the non-solicitations provisions of the FAIT Agreement and Invest's tortious assistance of Bruggman's wrongful conduct;
4. damages for Bruggman's breach of the non-solicitation provisions of the FAIT Agreement and Invest's tortious assistance in an amount to be determined at the hearing of this matter; and
5. any other relief that the panel deems just.

Respondents requested that the Statement of Claim be dismissed and that Claimant recover nothing in this action.

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.

On August 08, 1997, Peter von Maur, counsel for Claimant, agreed with George Covington, Esq., counsel for Respondents, to remove Invest Financial Corp. as a respondent and proceed only against Respondent John Bruggman.

Pursuant to Rule 10101(b) of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.

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 John Bruggman is hereby liable and shall pay to Claimant the sum of \$2,437.00 without interest.
2. All other relief requests are denied.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

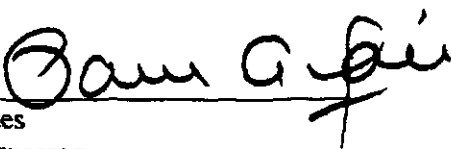
Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have decided that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee and the \$350.00 member surcharge previously paid by the Claimant and have assessed the following Forum Fees:

2 Sessions x \$600.00	=	\$1,200.00
Minus Claimants hearing deposit	=	<u>\$600.00</u>
Total Outstanding	=	\$600.00

Claimant is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$600.00, Claimant previously deposited \$600.00 with NASD Regulation, Inc., therefore, no payment is required. Respondent Bruggman is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$600.00. A member surcharge of \$350.00 has been assessed against Prudential Securities.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS' SIGNATURE



Paul A. Yates
Public Chairperson

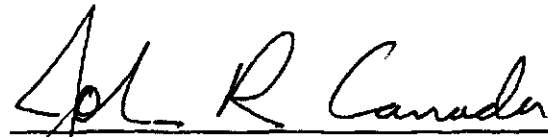
John R. Canada
Public Panelist

Guy L. Nichols
Industry Panelist

Date of Decision: October 10, 1997

ARBITRATORS' SIGNATURE

Paul A. Yates
Public Chairperson



John R. Canada
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