

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ellis T. Prince, Jr.

96-03961

Name of Respondents

Prudential Securities Inc
Robert Provence
Warren E. Rowe

REPRESENTATION

Claimant Ellis T. Prince, Jr. ("Claimant") was represented by James B. Thorsen, Esq., Thorsen, Marchant & Scher, Richmond, VA.

Respondents Prudential Securities, Inc. ("PSI"), Robert Provence ("Provence") and Warren E. Rowe ("Rowe") were represented by Kirsten Hotchkiss, Esq., Prudential Securities, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed September 5, 1996.

Claimant's Uniform Submission Agreement was signed August 30, 1996.

The Joint Statement of Answer of PSI, Provence and Rowe (collectively "Respondents") was filed December 10, 1996.

PSI's Uniform Submission Agreement was signed December 10, 1996.

Provence's Uniform Submission Agreement was signed October 2, 1996

HEARING INFORMATION

Hearing Dates/Sessions: May 7, 1997/two sessions
May 8, 1997/two sessions
May 12, 1997/three sessions

Hearing Location: Omni Hotel
Richmond, VA

CASE SUMMARY

Claimant alleged, among other things, that Respondents defamed his reputation, breached and tortuously interfered with his contract, discriminated against him on the basis of his age and disability, ruined his career and retirement plans and otherwise caused him to suffer severe humiliation, shame and embarrassment. Claimant alleged that he began his employment as a Financial Advisor to PSI in April

1983, having transferred from Merrill Lynch where he had been a Financial Advisor since 1979. Claimant alleged that in 1994, at age 67, Claimant began to experience some health problems which related primarily to a cervical disc in his neck and other health issues which lead to his consideration of a working on a semi-retired basis as a Senior Financial Sales Associate under the count of another PSI Financial Advisor, Rowe, who was approximately age 35 in 1994. Therefore, Claimant alleged that in late February 1995, with the consent of PSI and its branch manager, Provence, Claimant and Rowe entered into an agreement whereby Claimant would transfer his account book with a value of approximately \$12 million to Rowe, and Rowe agreed to pay Claimant \$2,000.00 each month and PSI Employee Benefits and payroll deductions in the annual amount of \$6,667.00. Claimant alleged that he agreed to meet a minimum of \$25,000.00 each quarter in gross client commissions beginning the second quarter of 1995.

Claimant alleged that shortly after the agreement was executed, Claimant and Rowe addressed letters to Claimant's clients advising them of the change in status. Subsequently, Claimant alleged that he underwent surgery in April 1995, returned to work in late May 1995 and was almost back to his normal schedule by late June 1995. Claimant alleged that in June 1995, he and Rowe, upon Claimant's review of his clients' accounts, discussed Claimant's strategy of having clients who had positions in Unisys Preferred ("UP") to sell their positions in UP and roll over their sale into a purchase of Oppenheimer Capital Corporation ("OCC"). Thereafter, Claimant alleged that he called his respective clients in the last two weeks of June, as he would be on vacation June 29 until July 10, and recommended the strategy as reviewed with Rowe. Claimant alleged that he gave his order tickets to Rowe prior to leaving the office on vacation and contacted the office several times while he was out on vacation, and he was never advised by Rowe that there were any customer inquiries, much less complaints. Claimant alleged that when he returned to the office on July 10, 1995, Rowe said that he received calls from three of Claimant's clients, all of which Rowe characterized as complaints. However, Claimant alleged that the customers have stated that they were not complaints, merely inquiries, on the status of their accounts. Claimant alleged that Rowe advised Provence of these three alleged complaints and that Provence was able to contact two of the three customers. Claimant alleged that one customer could not recall the conversation with Claimant but did state that he authorized the sale of his UP stock and the second customer contacted by Provence stated that he called because he was concerned about the characterization of OPP as being a Limited Partnership as noted on his confirmation slip. Claimant alleged that Provence was unable to contact the third customer. Claimant alleged that Provence accused him of using discretion in his customers' accounts, and therefore, on July 12, 1995, Claimant resigned under protest. Thereafter, Claimant alleged that PSI filed a form U-5 with the NASD stating that Claimant exercised discretion in the accounts of three customers. Claimant alleged that because of the statement on the U-5 filing, Claimant was unable to secure employment at another brokerage firm.

Claimant alleged that none of the customers filed any written complaints, no customers lost any money, and all three customers rejected any request for rescission. Claimant alleged that all customers stated that there was no exercise of discretion in their accounts, that all orders were executed pursuant to their directions and all three protested the characterization of their inquiry as complaints. Claimant alleged that the Respondents intentionally misconstrued and mischaracterized customer inquiries as complaints, defamed him in the filing of the Form U-5, and that PSI started an inquiry with the New York Stock Exchange into the alleged unlawful trading. Claimant alleged that Respondents' activities defamed him, resulted in a breach of his agreement, and discriminated against him due to his age and disability.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that they terminated Claimant's employment for legitimate business reasons that had nothing to do with his age or disability; that he admittedly engaged in unauthorized trading on behalf of several

of his clients by exercising discretion in their accounts. Respondents maintained that such unauthorized trading breached not only PSI's policy, but also constitutes a violation of state securities laws and the New York Stock Exchange regulations. Furthermore, Respondents maintained that Claimant's contract provided that he could be terminated at any time for any reason upon written notice or with no notice if the termination was based upon cause.

Respondents maintained that it is impossible for a party to interfere with its own contract. Therefore, Respondent PSI maintained that Claimant's claims of tortious interference must also fail as to PSI and that Respondents Rowe and Provence, as employees of PSI, are considered part of PSI and therefore cannot be found to have interfered with that contract either. Respondents further maintained that when the action involved is the termination of employment based upon information gathered from employees and customers and is the supervisory decision of the manager, there can be no claim of conspiracy. In addition, Respondents maintained that the language reported on the Form U-5 is truthful and accurate, and moreover, the reporting of the termination of employment on the Form U-5 is absolutely privileged.

Respondents also raised the affirmative defenses of failure to state a claim upon which relief may be granted; failure to state a claim upon which punitive damages can be granted; failure to state a claim upon which attorney's fees can be granted; Claimant was an at-will employee and could be terminated at any time with or without notice and with or without cause; waiver; statute of frauds; estoppel; contributory and/or comparative fault; and that Respondents relied upon legitimate non-discriminatory factors unrelated to Claimant's age or disability in determining to terminate his employment.

RELIEF REQUESTED

Claimant requested relief in the amount of \$1,000,000.00, including punitive damages; an amendment to the U-5 omitting any reference to the use of discretion and/or dishonesty or fraud in the trading in his customer's accounts, as well as the costs and expenses of this arbitration including attorney's fees.

Respondents requested that the claims against PSI, Rowe and Provence be dismissed, or in the alternative, that the claims against the individual Respondents 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.

The panel considered Claimant's Motion to Preclude Respondents' Answer and Respondents' Response thereto, and denied the Motion.

The panel dismissed the claims under the Americans with Disabilities Act and Age Discrimination in Employment Act, both state and federal, as against Respondents Rowe and Provence on May 7, 1997. At the conclusion of the hearing, after full consideration of all evidence as presented, the panel dismissed all claims against individual Respondents Rowe and Provence.

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. That Respondent PSI is liable to and shall pay to Claimant \$211,000.00, plus eight percent post-award interest (8%) from the date the award is delivered to Respondent PSI.
2. That all claims as to Respondents Rowe and Provence are dismissed.
3. That Respondent PSI shall file an amended Form U-5 deleting all reference to Claimant having exercised discretion in customers' accounts; i.e., the Goyne, Salah and Brummel accounts.
4. That the claim for punitive damages is denied.
5. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of the Forum Fees as specifically addressed below.
6. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

7 sessions x \$1,000.00 = \$7,000.00

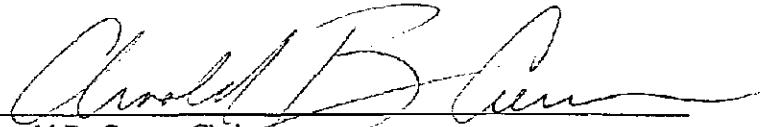
Forum Fees are assessed at \$3,500.00 to Claimant and \$3,500.00 to Respondent PSI. Claimant is to receive credit for the \$1,500.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant with a net assessment due of \$2,000.00. Respondent PSI has a net assessment due of \$3,500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

5/22/97



Arnald B. Crews, Chairman
Public Arbitrator

James F. Tucker
Public Arbitrator

Phillip R. Clark
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Arnald B. Crews, Chairman
Public Arbitrator

James F. Tucker
Public Arbitrator

5/30/97

Phillip R. Clark
Phillip R. Clark
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

5-21-97

Arnald B. Crews, Chairman
Public Arbitrator

James F. Tucker
James F. Tucker
Public Arbitrator

Phillip R. Clark
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997