

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Gary E. Domke

and

96-04183

Name of Respondents

Prudential Securities, Inc.,

Eugene Ingargiola,

David Jacobsmeyer,

Jim Collins,

Lee Naas,

Alan Miller, and

Marshall Weisman

REPRESENTATION OF PARTIES

Gary E. Domke ("Claimant") was represented by David O. Kreuter, Esq., of Kreuter & Gordon, P.C., St. Louis, Missouri.

Prudential Securities, Inc. ("PST"), Eugene Ingargiola ("Ingargiola"), David Jacobsmeyer ("Jacobsmeyer"), Jim Collins ("Collins"), Lee Naas ("Naas"), and Alan Miller ("Miller") (collectively referred to as "Respondents") were represented by Christopher P. Nelson, Esq., of Prudential, New York, New York.

Marshall Weisman ("Weisman") was not represented. Marshall was released as a named party in this matter on or about December 17, 1996, and therefore, did not participate in this arbitration.

CASE INFORMATION

Claimant filed the Statement of Claim on or about September 19, 1996, and signed the Submission Agreement September 17, 1996. Claimant filed an Answer to Prudential's Counterclaim on or about October 26, 1998.

Respondents filed a Statement of Answer on or about February 4, 1997. Prudential signed a Submission Agreement on February 5, 1997. Ingargiola, Jacobsmeyer, Collins, Naas, and Miller signed their Submission Agreements on January 30, 1997. Prudential filed a Counterclaim on or about September 14, 1998.

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HEARING INFORMATION

A pre-hearing conference was held with the panel on August 13, 1997 for one (1) session. A pre-hearing conference was held with the Chairman on January 23, 1998 for (1) session.

The Arbitration Panel held a hearing on June 2, 1998, for two (2) sessions, October 12, 1998 for two (2) sessions, October 13, 1998, for Two (2) sessions, October 14, 1998, for two (2) sessions, and October 15, 1998 for two (2) sessions in St. Louis, Missouri for a total of ten (10) hearing sessions.

CASE SUMMARY

Claimant alleged that Respondents: Breached their contract; made defamatory statements regarding Claimant that adversely reflected on Claimant's abilities in his business and professions; that Respondents published the statements to third parties; Respondents intentionally interfered with prospective economic advantage with his customers. The claims arose out of the termination of an employment relationship between Claimant and Respondents.

Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant failed to state a claim upon which relief can be granted; Claimant's breach of contract claim cannot be asserted against individual PSI employees who are not parties to the Employment agreement in their individual capacity; Claimant's claims, in part, are barred by the applicable statute of limitations; Claimant cannot assert an independent claim for punitive damages; Claimant's error does not, and cannot, impose a contractual duty on PSI to provide him with its proprietary and confidential information; any statements made by Respondents concerning Claimant were truthful; and any statements made by Respondents concerning Claimant are protected by absolute and/or qualified privilege.

In its Counterclaim, PSI alleged that Claimant: Breach of contract due to the discovery of original new account cards, which Claimant was contractually bound to return on his departure, were in client files collected from Claimant's residence; and that Claimant's conduct in this matter has violated NASD Conduct Rule 2100 which requires members to adhere to high standards of commercial honor and just and equitable principles of trade.

In his Answer, Claimant denied the allegations in PSI's Counterclaim. Claimant asserted that: Nowhere does the Employment Agreement refer to the Thompson McKinnon ("TM") records; the broker copies that were in the possession of claimant were not originals; Claimant did not remove these documents from PSI while he was an employee at PSI; the documents were abandoned by TM and PSI; PSI has never used these documents since the time of combination of TM and PSI and PSI's conversion to an all computerized system; PSI has pled no damages attributable to any alleged actions of Claimant; and the broker copies were, at the time of Claimant's termination, at least four (4) years old.

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RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award in an amount in excess of \$2,124,000, attorney's fees, filing fees, hearing session deposits, travel expenses, punitive damages of \$1,500,000, and the granting of such other relief as the panel deems just and proper.

In their Answer, Respondents requested that all claims alleged in the Statement of Claim should be denied in all respects.

In its Counterclaim, PSI requested entry of the following: An award finding that Claimant is in breach of his employment agreement and award damages to PSI in an amount to be established at the hearing of this matter; an award finding that Claimant's claim for breach of contract has been asserted recklessly or in bad faith and that his conduct is contrary to NASD Conduct Rule 2100; an award finding that PSI is entitled to receive payment for costs incurred in defending Claimant's breach of contract claim, and award PSI damages in an amount sufficient to pay all such costs; an award finding that PSI is the owner of the 15 boxes of client records obtained from Claimant and directing the return of all other PSI documents in Claimant's possession; and grant PSI such other and further relief as to this panel appears just and proper.

Claimant requested that the panel dismiss the Counterclaim and award to Claimant his costs to defend this Counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

On or about March 2, 1998, the individual Respondents filed a Motion to Dismiss the claims made against them. After consideration of the pertinent documents and deliberation, the arbitrators denied the motion.

On or about June 3, 1998, Respondents filed a Motion to Dismiss and for Sanctions asserting Claimant's abuse of the discovery process and violated the Chairman's discovery order by withholding thousands of pages of relevant, responsive documents from production despite repeated demands therefor by respondents. After consideration of the pertinent documents, and deliberation, the panel denied the motion.

On or about September 11, 1998, PSI requested leave to file a Counterclaim. After review of the pertinent documents and deliberation, the arbitrators granted the motion.

At the hearing, Respondents made an oral Motion to Dismiss. After hearing argument from the parties, and deliberation, the motion was denied.

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The record of this arbitration was closed by the arbitrators on January 15, 1999.

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

Claimant's claims are, and each of them, denied with prejudice.

In regard to the Counterclaim, the arbitrators find in favor of the Claimant except that Prudential is awarded ownership of the fifteen (15) boxes of client files obtained from Gary Domke.

All other claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

OTHER COSTS

Except as set forth in this Award, each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session, \$1,000 for each pre-hearing session with the panel, and \$300 for each prehearing conference with a single arbitrator. There was one (1) pre-hearing session with the panel @ \$1,000 per session, one (1) pre-hearing session with the Chairman @\$300 per session, and 10 hearing sessions @ \$1,000 per session for a total of \$11,300 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any 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 Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session

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deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. by the Claimant. Further, NASD Regulation, Inc. shall retain excess deposits as forum fees in the amount of \$500 previously paid by the Claimant.

Pursuant to Rule 10332(c) of Code, NASD Regulation, Inc. shall retain the non-refundable Counterclaim filing fee in the amount of \$500 and shall retain as forum fees the Counterclaim hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. by PSI. Further, NASD Regulation, Inc. shall retain excess deposits as forum fees in the amount of \$ 650 previously paid by Respondents.

NASD Regulation, Inc. shall retain postponement fees in the amount of \$1,000 previously deposited by PSI.

Additional forum fees in the amount of \$8,550 (\$11,300 - \$1,500 deposits - \$1,250 in deposits paid by PSI) are assessed by the arbitrators against the Claimant.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent PSI has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

Fees are payable to NASD Regulation, Inc.

Dated:

Richard K. Zerr
Public Arbitrator, Presiding Chair

William R. H. Martin
Public Arbitrator

Terry E. Walker
Terry E. Walker
Industry Arbitrator

Jan. 20, 1999

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Public Arbitrator, Presiding Chair


William R. H. Martin
Public Arbitrator

Terry E. Walker
Industry Arbitrator


1/21/99

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Dated:


Richard K. Zerr
Public Arbitrator, Presiding Chair

1-19-99

William R. H. Martin
Public Arbitrator

Terry E. Walker
Industry Arbitrator