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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Prudential Securities Incorporated

Claimant,

and

No. 96-04572

Miguel Anibal Millan, III

Respondent.

REPRESENTATION OF PARTIES

Claimant, Prudential Securities Incorporated ("PSI") was represented by: David S. Sterling, Esq. of Prudential Securities, Inc. in Houston, Texas.

Respondent, Miguel Anibal Millan III ("Millan") was represented by: George "Rocky" Bromley, Esq. in San Antonio, Texas.

CASE INFORMATION

Claimant PSI's Statement of Claim was filed on or about: October 23, 1996.

Claimant PSI's Submission Agreement was signed on: October 4, 1996.

Claimant PSI's Answer to Respondent Millan's Request for Relief was filed on or about: January 2, 1997.

Respondent Millan's Statement of Answer and Request for Relief was filed on or about: December 30, 1996.

HEARING INFORMATION

The hearing was held on: September 10, 1997 for one (1) session.

The hearing was held in: Houston, Texas.

CASE SUMMARY

Prudential Services Incorporated, ("PSI"), brought this action against Respondent Miguel Anibal Millan III, ("Millan") for the recovery of a promissory note signed by Millan on June 3, 1996. Specifically, PSI alleged that the promissory note stated the full amount of the note, plus interest, shall become immediately due and payable upon the termination of Millan's employment with PSI. Accordingly, once PSI terminated Millan's employment on September 24, 1996, the outstanding balance of the note, plus accrued interest, became immediately due and payable to PSI.

PSI claimed that the employment agreement expressly noted that Millan was "employed at will and may be terminated at any time with or without cause." That agreement recited numerous grounds for termination for cause, including "violation of any policy or rule of PSI," and "any other act or omission detrimental to the conduct of PSI's business." Furthermore, PSI stated that the employment agreement expressly noted that if Millan resigned for any reason before completing four years of employment, or if he was terminated for cause, he would not be entitled to any unpaid amounts of transitional compensation, and moreover, any amounts owed by Millan to PSI would be accelerated and become immediately due and payable.

PSI alleged that on September 9, 1996 Millan went to the lake house of a Mexican citizen where Millan was given \$10,000 in cash, and that Millan took the money to a bank converting it into a \$10,000 cashier's check in the name of the Mexican citizen's company, a Cayman Islands entity. Millan then allegedly deposited the check into the PSI account belonging to the Mexican citizen's company.

PSI contended that Millan's actions were clear violations of PSI's policies and rules. Specifically, PSI's Compliance and Procedures Manual contains a section on "Cash and Currency Transactions" which provided that "Employees cannot accept cash from a client to purchase a cashier's check (or similar instrument) for that client" and that "Employees cannot arrange with a financial institution for a client to exchange cash for a different form of payment." When PSI learned what Millan had allegedly done, it investigated the matter and terminated Millan. PSI asserted that without question, Millan had committed a clear violation of PSI's policies and rules, that his termination was for cause, and that Millan had breached the terms of his promissory note making it immediately due and payable.

Respondent Millan denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Respondent Millan stated that he did not have access or control over any funds belonging to a Mexican citizen or a Cayman Island company as alleged in PSI's Statement of Claim.

Millan also asserted that PSI improperly investigated the matter involving the termination of Millan, and that PSI's improper investigation ultimately resulted in his termination, and therefore, such termination is wrongful. Millan argued that such wrongful termination and improper investigation

constituted negligence, gross negligence, breach of contract, breach of fiduciary duty and disparity of treatment to Millan on the part of PSI and that such actions proximately caused damages to Millan. Consequently, Millan sought compensation from the arbitration panel.

In response, PSI asserted that with respect to the events that led to Millan's termination, Millan did not deny accepting cash, converting it to a cashier's check, and depositing it into a PSI account, which are all violations of PSI's policies and procedures. Rather, Millan's defense was that "he did not have access or control over any funds belonging to a Mexican citizen of a Cayman Island company as alleged in PSI's statement of claim." PSI asserted that Millan cryptically alleged that PSI improperly investigated the matter.

In short, PSI asserted that there was absolutely no merit to Millan's allegations and request for relief and that as a threshold matter, it was irrelevant whether Millan had access or control over the funds which were at issue. Rather, Millan was liable because he violated PSI's policies by accepting cash from a client to purchase a cashier's check, and by arranging with a financial institution for a client to exchange to cash for a different form of payment.

RELIEF REQUESTED

Claimant PSI requested an award for: the sum of \$102,798.00 for Millan's default in payment of the note; interest on the sum of \$102,798.00 at the rate of 7% per annum, from June 3, 1996, to the date of the award; PSI's attorney's fees, pursuant to the terms of the note; post-award interest at the highest rate allowed by law; and all other forms of relief to which PSI is entitled in law and equity.

Respondent Millan requested that the claims asserted against him be dismissed in their entirety and that he be awarded costs and attorneys' fees. Millan also requested that the panel grant him such other and further relief, both at law and equity, to which he may be justly entitled.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Miguel Anibal Millan, III did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to § 10301 of the Code of Arbitration Procedure (the "Code") and having executed an undated Submission Agreement as well as appearing and testifying at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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, Miguel Anibal Millan, III is liable for and shall pay to Claimant, Prudential Securities Incorporated the sum of \$85,000.00 in compensatory damages;
2. The parties shall bear their own costs and attorneys' fees;
3. Respondent, Miguel Anibal Millan, III's request for relief is denied in its entirety and dismissed with prejudice;
4. Other than forum fees addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing sessions $750.00 = 750.00$ in forum fees. Pursuant to § 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$500.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10332(c) of the Code, Respondent, Miguel Anibal Millan, III shall pay to Claimant, Prudential Securities Incorporated the sum of \$375.00 in forum fees.

Concurring Arbitrators' Signatures

Jack Payne
Jack Payne
Industry Arbitrator
Chairman

October 20, 1997
Dated:

Dolores Martin
Dolores Martin
Industry Arbitrator
Panelist

October 17, 1997
Dated:

Rosemary A. DePalma
Rosemary A. DePalma
Industry Arbitrator
Panelist

October 17, 1997
Dated:

For NASD use only:

Date Award was served on the parties: October 24, 1997.

Rosemary A. DePalma
Rosemary A. DePalma
Industry Arbitrator
Panelist
For NASD use only:
Date Award was served on:

NASD Regulation, Inc.

Office of Dispute Resolution

In the Matter of the Arbitration Between

Prudential Securities Incorporated,

Claimant.

v.

Report of the Arbitrators
No. 96-04572

Miguel Millan,

Respondent.

During the course of the hearing in the above captioned matter, the undersigned arbitrators heard testimony and evidence which called into question the relation between John Eric Bannon, the Prudential Financial Assistant and his client's offshore account "Hi Bogey" which was an integral part of this arbitration. The origin of the \$10,000.00 in the account and the existence and accessibility of the San Antonio P.O. Box specifically seem significant enough to warrant investigation. The undersigned arbitrators feel that the District Office of the NASD Regulation, Inc. should investigate the matter to determine whether there were any violations of the Rules of Fair Practice.

Arbitrators' Signatures

Jack Payne

October 20, 1997

Jack Payne

Dated:

Dolores Martin

October 17, 1997

Dolores Martin

Dated:

Rosemary A. DePalma

October 21, 1997

Rosemary A. DePalma

Dated: