

**AWARD****NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant**

Wendy D'Ambrogia

v.

Arbitration No.  
96-04768

**Name of Respondents**

Prudential Insurance Company of America  
Richard Holland

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**REPRESENTATION**

For Claimant: Steven J. Hassing, Esq., Dublin, California

For Respondent Prudential Insurance Company: Kathryn K. Morrison, Esq., Seyfarth, Shaw,  
Fairweather & Geraldson, San Francisco, California

For Respondent Richard Holland: Carol C. Copsey, Esq., Berman, Berkeley & Laskey, LLP,  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed October 28, 1996

Claimant's Submission Agreement signed September 27, 1996

Statements of Answer filed by

Prudential Insurance Co.:	March 7, 1997
Richard Holland:	February 3, 1997

Respondents' Submission Agreements signed:

Prudential Insurance Co.:	March 25, 1997
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Richard Holland:

January 29, 1997

**HEARING INFORMATION**

A pre-hearing telephone conference lasting one session was held August 22, 1997.

The evidentiary hearing was held in San Francisco, California, as follows:

September 8, 1997	-	2 sessions
September 9, 1997	-	2 sessions
September 10, 1997	-	2 sessions
September 11, 1997	-	2 sessions
September 30, 1997	-	1 session

**CASE SUMMARY AND RELIEF REQUESTED**

Claimant alleged sexual harassment and retaliation in violation of the California Fair Employment and Housing Act, Section 12940; sexual battery under Civil Code Section 1708.5; battery; violations of Labor Code Sections 6400 and 2800; and intentional infliction of emotional distress.

Claimant sought compensatory and punitive damages in excess of \$1,000,000, plus attorney's fees and costs.

Respondents denied all claims and asserted numerous affirmative defenses.

Based upon all the testimony, documentary evidence, briefs, and argument presented, the arbitrators conclude that claimant has not proved her claims by a preponderance of the evidence and they are, therefore, denied. This decision is based, in part, upon the following reasons.

Claimant was an employee, for purposes of the FEHA, of Respondent Prudential Insurance Company from September 1994, until February 10, 1995. Respondents' efforts to characterize her as a non-employee prior to December, 1994, are unavailing because she was under the direction and control of Prudential's Mt. Diablo office at all relevant times.

Claimant's allegations that Respondents' conduct resulted in a hostile environment have either not been proven by a preponderance of evidence or do not amount to actionable sexual harassment under the FEHA. (Claimant made no quid pro quo sexual harassment claim.)

Respondent's conduct on the San Diego trip was welcomed by Claimant; the passing of semi-nude photos at the November party was not "intimidating, ridiculing or insulting" as the Harris and Meritt cases require; the numerous telephone calls by Respondent Holland to

Claimant were not proven to be of a harassing nature; the Christmas shopping trip and gift were welcomed; the "spray" and other comments attributed to Holland have not been proved; Chivera's "how hot" comment was an isolated incident that did not adversely affect Claimant's employment; and Respondent did not sexually pursue Claimant nor talk about her to other employees in a manner violative of the FEHA.

The "menstruation" comments made at the Lines' home appear to have been made by Holland and may have temporarily embarrassed Claimant, especially because Holland was her supervisor for purposes of the FEHA. However, this comment was a one-time offensive utterance and did not unreasonably interfere with Claimant's on-going work performance. Claimant's short commission sales history with Prudential does not establish a deteriorating performance stemming from any of Respondents' conduct.

Because the panel concludes that Respondents have not committed actionable sexual harassment the question of the adequacy of Respondents' investigation is moot.

Claimant has not proved any adverse retaliatory employment action by Prudential resulting from her sexual harassment complaint to Prudential management.

Claimant has not proved non-consensual touching (intimate or otherwise) that would violate Civil Code Section 1708.5 or common law battery, and has not proved any of her other claims.

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#### **OTHER ISSUES**

This claim was originally filed in Contra Costa Superior Court, Case Number C95-04776, on October 31, 1995 and was compelled to arbitration by Order of Judge Robert G. McGrath dated April 2, 1996.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR.

#### **AWARD**

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

1. All claims, including the claim for punitive damages, are dismissed in their entirety.
2. The parties shall each bear their respective costs of arbitration, including attorneys'

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**FORUM FEES**

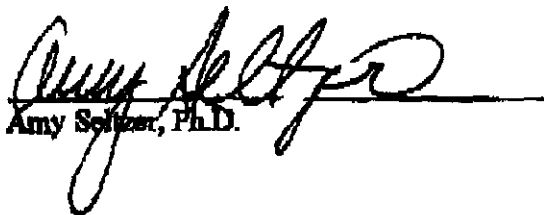
Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain Claimant's \$500 non-refundable filing fee, but shall refund the \$1,000 hearing session deposit.

Respondent Prudential Insurance Company of America is assessed all forum fees, payable to NASDR, Inc.

1 pre-hearing telephone conference @ \$300/session	\$300
9 hearing sessions @ \$1,000/session	<u>\$9,000</u>
Balance due	<u>\$9,300</u>

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Charles E. Farnsworth, Esq.

  
Amy Solter, Ph.D.

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Blake Weston, Esq.

Date Served: October 29, 1997

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Charles E. Farnsworth, Esq.

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