

**AWARD**

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant

Stephen E. Peters

v.

Arbitration No.  
96-05004

Name of Respondents

Prudential Insurance Company of America;  
PRUCO Securities;  
Steve Adams;  
Larry Henry

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**REPRESENTATION**

For Claimant: Michael D. Rudy, Esq., Chun, Rudy & Byrns, Honolulu, Hawaii, and Craig K. Shikuma, Esq., Kobayashi Sugita & Goda, Honolulu, Hawaii

For Respondents: Kenwood C. Youmans, Esq., and David Van Pelt, Esq., Seyfarth, Shaw, Fairweather & Geraldson, Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed November 11, 1996

Claimant's Submission Agreement signed November 6, 1996

Joint Statement of Answer filed January 10, 1997

Respondents' Submission Agreements signed:

Prudential Insurance:	January 3, 1997
PRUCO Securities:	December 6, 1996
Steve Adams:	January 10, 1997
Larry Henry:	November 3, 1996

### CASE INFORMATION

A pre-hearing telephone conference lasting one session was held with all arbitrators on June 3, 1997.

A pre-hearing telephone conference lasting one session was held with the Chair on December 9, 1997.

The evidentiary hearing was held in Honolulu, Hawaii, as follows:

January 6, 1998	-	2 sessions
January 7, 1998	-	2 sessions
January 8, 1998	-	2 sessions
January 9, 1998	-	2 sessions
January 10, 1998	-	2 sessions
January 12, 1998	-	3 sessions
January 13, 1998	-	2 sessions
January 14, 1998	-	1 session

### CASE SUMMARY

Claimant alleged he was recruited in late 1990 by Respondents Prudential and Henry to work in the Honolulu, Hawaii, office as a life insurance sales agent. Claimant alleged he accepted employment based on certain representations made concerning income and promotion steps. Claimant alleged Respondents refused to provide him with a management contract as promised, despite the fact that Claimant met the required performance goals, until January 1994, rather than October 1992. Claimant alleged that thereafter, Respondent Adams was promoted to managing director despite demonstrating a pattern of discrimination. Claimant alleged that shortly thereafter one of his most productive agents was transferred from his supervision to that of Respondent Adams, depriving him of commissions and overrides, in violation of past custom and prior representations of Prudential.

Claimant alleged Respondents engaged in practices that violated Hawaii criminal statutes and NASD rules and regulations.

Claimant alleged that under Prudential guidelines he reported to the Prudential Ethics Hotline such breaches about August 1995. Claimant alleged that Respondents Prudential and Henry improperly disclosed to others this confidential report made to the Ethics Hotline, including his identity.

Claimant alleged that despite an investigation by Prudential into the practices in the Hawaii office, the discrimination was not corrected. Claimant stated that he was terminated by Prudential on April 19, 1996, and that his U-5 termination notice filed with the NASD contained the defamatory statement that he was discharged for poor management performance. Claimant alleged that his termination was retaliatory.

Claimant alleged: breach of implied contract against Prudential; fraud and/or negligent

misrepresentation against Prudential' and Mr. Henry; age discrimination against Prudential and Mr. Adams; violation of the Whistleblower's Protection Act against all Respondents; negligent and intentional infliction of emotional distress against all Respondents; negligence against all Respondents; and libel against Prudential.

Respondents denied the allegations of wrongdoing. Respondents stated that the terms and conditions of Claimant's employment were embodied in the written contract between the parties executed on January 17, 1994, which expressly provides that the employment relationship may be terminated at any time by either party. Respondents asserted that good cause existed for the termination of Claimant, including his refusal to abide by the directives of his supervisors and other inappropriate behavior.

Respondents further alleged that the claim failed to state facts sufficient to constitute a cause of action; that any claims are barred by the applicable statutes of limitations; that any claims are barred by the doctrine of unclean hands; that Claimant's claim under the Hawaii Whistleblower's Protect Act is barred because Claimant did not report or was not about to report the alleged misconduct to a public entity; that Prudential did not knowingly make false Statements about Claimant on the U-5 form, and further that the statements made there are privileged; that any claims asserted against Respondents Adams and Henry are barred by the doctrine of managerial immunity; and that Claimant failed to mitigate his damages.

#### **RELIEF REQUESTED**

Claimant requested general and special damages in an amount to be shown at hearing, plus punitive damages, cost of arbitration and attorney's fees.

Respondents requested dismissal of all claims.

#### **OTHER ISSUES**

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

#### **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 all of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$130,000 in satisfaction of all claims.



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2. The claims for punitive damages are denied.
3. The parties shall each bear their respective costs of arbitration, including attorney's fees.

**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 \$600 hearing session deposit.

Respondents Prudential Insurance Co. and PRUCO Securities are jointly and severally assessed all forum fees. In addition, the NASD shall retain the \$350 member surcharge previously paid.

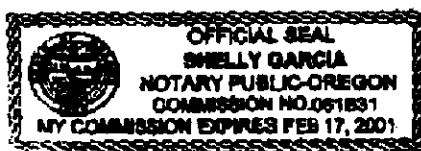
1 pre-hearing telephone conference @ \$600/session	\$600
1 pre-hearing telephone conference @ \$300/session	\$300
16 hearing sessions @ \$600/session	\$9,600
Balance due	<u>\$10,500</u>

Fees are payable to NASDR, Inc.

James D. Knott  
James D. Knott

STATE OF HAWAII OREGON )  
COUNTY OF MULTNOMAH ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 4<sup>th</sup> day of March, 1998, before me personally appeared James Knott to me known to be the person described in and who executed the foregoing and acknowledged that he executed the same as his free act and deed.




Shelly Garcia  
Notary Public, State of Hawaii State of Oregon  
My commission Expires: 2-17-01

Date served: 3/19/1998

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STATE OF ~~HAWAII~~ *California* )  
*of Oakland Alameda* ) SS:  
CITY AND COUNTY OF ~~HONOLULU~~ )

 **DONNA L. VERDECK**  
COMM. # 1033535  
Notary Public - California  
**ALAMEDA COUNTY**  
My Comm. Expires MAR 24, 1999

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