

## **AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC. OFFICE OF DISPUTE RESOLUTION**

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In the Matter of the Arbitration Between

Sharon Kay Prewett,

Claimant.

v.

Case Number 96-05374

Prudential Securities, Incorporated,

Respondent.

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### **REPRESENTATION OF PARTIES**

Claimant, Sharon Kay Prewett was represented by James R. Cornelieus, Esquire, Sole Practitioner, of Houston, Texas yet neither the Claimant nor her counsel appeared at the hearing.

Respondent, Prudential Securities, Inc. was represented by David D. Sterling, Esquire of Baker & Botts located in Houston, Texas.

### **CASE INFORMATION**

Claimant, Sharon Kay Prewett's Statement of Claim was filed on or about December 3, 1996.

The Submission Agreement of Claimant, Sharon Kay Prewett was signed on November 25, 1996.

Respondent, Prudential Securities, Inc.'s Statement of Answer and Counter-Claim was filed on or about February 11, 1997.

Claimant, Sharon Kay Prewett's Reply to the Counter-Claim was filed on or about March 18, 1997.

### **HEARING INFORMATION**

The hearing was held on December 9, 1997 for one (1) hearing session.

**CASE SUMMARY**

Claimant, Sharon Kay Prewett ("Prewett") sought monetary damages and declaratory relief against Respondent, Prudential Securities, Inc. ("Prudential") arising from its alleged wrongful conduct in connection with Prudential's misrepresentations to Prewett in order to induce her to leave Merrill Lynch and to join Prudential as well as Prudential's subsequent wrongful termination of Prewett and related tortious conduct.

Claimant asserted that she was induced into accepting Prudential's offer of employment based on specific false representations made by Prudential's management, including representations expressly confirming Prewett's ability to do business with Italian nationals. Relying on these along with other representations, Prewett went to work for Prudential and transferred to Prudential one account belonging to an Italian national, Antonio Careri, and another account belonging to her father, J.C. Prewett, a resident of Montana. As alleged, Prudential's management approved the new account forms for both clients, which at each client's request listed the Claimant's address as the mailing address to where the account statements should be sent. Claimant alleged that no trades were made in these accounts after Prewett accepted employment with Prudential other than the initial transaction in her father's account. Several months after approving the new account forms and allegedly without indicating to Prewett that there was a problem, Prudential abruptly terminated her employment, telling her that she had violated securities regulations by having clients statements mailed to her home and that she broke the laws of the State of Texas by trading in an account of an Italian national. Prudential allegedly further offered as a reason of Claimant's termination the fact that she was not registered in Montana, the state of her father's residence. Prewett contended that Prudential conjured up purported reasons for her termination as a pretext to cover up its own fraudulent misrepresentations and to retaliate against her when she refused to settle on Prudential's unilateral terms. According to Claimant, Prudential continued to reassure her that she would be able to solicit Italian business even after Prudential became aware there might be a problem with soliciting Italian business by telling her to hold off on any trades in Italian national accounts until Prudential could resolve the problem. Prewett allegedly honored that request and never made any trades in any accounts of Italian nationals. After Prudential concluded that Prewett would not be able to solicit Italian business, Prudential allegedly acknowledged its misrepresentations and offered to settle with Prewett.

Respondent, Prudential Securities, Inc. denied all allegations of wrongdoing asserted by Claimant. Specifically, Prudential alleged that Prewett engaged on a pattern of disruptive and deceptive behavior designed to circumvent Prudential's policies and procedures governing the proper handling of customer accounts. Prudential contended that Prewett was terminated for cause after Prudential discovered Prewett had intentionally falsified information on at least two customer accounts in order to bypass computer controls, thereby violating the rules and policies of Prudential and self-regulatory organizations to which Prudential and Prewett are members, and also breaching her employment contract. Prudential claimed that since Italian law prohibits a broker who is not registered in Italy

from doing business with Italian citizens, Prewett was prohibited from doing this type of business. Prudential asserted the affirmative defenses including truth, opinion, privilege and the doctrine of unclean hands.

In its Counter-Claim, Prudential sought monetary damages for Prewett failure to pay the remaining balance on a Promissory Note ("the Note") executed by Prewett on May 3, 1996. According to the terms of the Note, Prudential loaned Prewett \$116,675.00 and Prewett promised to pay the principal amount plus interest at the rate of 7% per annum. Prewett allegedly agreed payment was to be made by deducting \$2,597.10 from her net commission check at the end of each commission month beginning in October of 1996 and ending in April of 2000. The Note also allegedly provided that the loan would be become immediately due and payable without notice upon termination of Prewett's employment.

Prudential entered into an Employment Agreement with Prewett on May 3, 1996 wherein Prudential agreed to pay Prewett transitional compensation of \$116,675.00 which would be paid in 43 equal installments of \$2,597.10 beginning with October of 1996 commissions month and ending in the April 2000 month, plus additional compensation on each such date equal to 7% of the total transitional compensation less the amount of each installment paid earlier. Prewett allegedly agreed she would only be entitled to such payments if she was not in default in making any payments owed by her to Prudential, not terminated for cause and still employed by Prudential on the date of each payment. Prudential contended that the term "cause" included insubordination, violation of any rule or regulation of any regulatory agency, violation of any policy or rule of Prudential and any other act or omission detrimental to the conduct of Prudential's business.

As alleged, Prewett was terminated for cause on or about October 31, 1996. Prudential contended the under the terms of the Note, \$114,380.54, which represents the unpaid principal balance of the loan at the time of termination, plus interest became due and owing.

Prewett requested that the Counter-Claim be denied due to constructive payment of the Note. Prewett asserted that she brought numerous accounts to Prudential which remained with Respondent following her termination, more than offsetting the amount of the Note.

### **RELIEF REQUESTED**

Claimant, Sharon Kay Prewett requested an award for actual and punitive damages in excess of \$1 million, but not to exceed \$5 million plus attorneys' fees. Claimant, Sharon Kay Prewett also requested that the Counter-Claim be dismissed in its entirety.

Respondent, Prudential Securities, Inc. requested that the Statement of Claim be dismissed in its entirety and that it be awarded the sum of \$114,380.54 for the amount owed on the Note; interest

at the rate of 7% per annum from October 13, 1996 to the date of the award; post-award interest at the highest rate allowed by law; costs; and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that Claimant, Sharon Kay Prewett had been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Claimant, Sharon Kay Prewett had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent, Prudential Securities, Inc. 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 §10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies and 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. The Statement of Claim filed by Claimant, Sharon Kay Prewett is denied in its entirety and dismissed with prejudice;
2. Claimant, Sharon Kay Prewett is liable for and shall pay to Respondent, Prudential Securities, Inc. the sum of \$127,661.09 which includes principal and interest on the Promissory Note;
3. Claimant, Sharon Kay Prewett is liable for and shall pay to Respondent, Prudential Securities, Inc. the sum of \$24,844.51 in attorneys' fees. In determining to award attorneys' fees, the arbitrators considered the terms of the Promissory Note; and

4. With the exception of forum fees which are addressed below, any claims or requests for relief not specifically awarded are hereby denied in their entirety and dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) hearing session x \$1,500.00 = \$1,500.00 in forum fees. Pursuant to §10205(b) of the 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 § 10205© of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 plus the \$500.00 overpayment previously submitted by Claimant, Sharon Prewett.

Pursuant to § 10205(c) and 10333 of the Code, Respondent Prudential Securities, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the \$500.00 claim filing fee and the \$500.00 member surcharge. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Arbitrators' Signatures:

Dated:

Richard P. Flake, Esquire  
Richard P. Flake, Esquire  
Public Arbitrator, Presiding Chair

January 30, 1998

Victor B. Russek, Jr.  
Victor B. Russek, Jr.  
Public Arbitrator, Panelist

February 2, 1998

Gil A. Baumgarten  
Gil A. Baumgarten  
Industry Arbitrator, Panelist

February 2, 1998

For NASD use only:  
Date served: February 2, 1998