

PACIFIC EXCHANGE

PACIFIC EXCHANGE, INC.
301 Pine Street
San Francisco, California 94104

Montell Currin, Jr.)	PCX CASE #: 98-S023
)	
CLAIMANT)	DECISION IN THE MATTER
)	OF ARBITRATION BETWEEN
V)	MONTELL CURRIN, JR. AND
)	PRUDENTIAL SECURITIES, INC.
Prudential Securities, Inc.,)	AND RELATED COUNTERCLAIM
)	
RESPONDENT)	
)	
Prudential Securities, Inc.)	
)	
COUNTERCLAIMANT)	
)	
V)	
)	
Montell Currin, Jr.)	
)	
)	

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant on September 4, 1998, and the Answer and Counterclaim of Respondents; having considered all testimony given on December 14, 15 and 16, 1999, at San Francisco, California, lasting 6 hearing sessions; and, having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: David J. Becht, Esq.
Adams, Nye, Simon & Walker LLP -- San Francisco, CA

Of Respondents: Peter R. Boutin, Esq.
Law Offices of Keesal, Young & Logan -- San Francisco, CA

SUMMARY OF CASE

Claimant Montell Currin, Jr. ("Claimant") entered an Employment Agreement ("the Agreement") with Respondent Prudential Securities, Inc. ("Prudential") on April 20, 1992 as an at-will employee. Pursuant to the terms of the Agreement, Prudential made a loan (know as "transitional compensation") to Claimant in the amount of \$150,000.00. The Agreement specified if Claimant was terminated without cause the unpaid installments would be accelerated and become immediately due. A promissory note was executed by Claimant which stated the Note, plus interest, was payable upon demand if Claimant was terminated. Claimant was unable to pay the taxes due on the first installment and requested and received a second loan from Prudential. In July 1993, in connection with the second loan, Claimant executed a promissory note in

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the amount of \$16,445.69

In April 1994, a second payment of taxes on the loan was due and Claimant was unable to pay them. He requested another loan for the tax payment. The request was denied by his branch manager. Claimant told the branch manager that he had been misled concerning Prudential's reputation, he was experiencing financial problems, and that he was unable to attract sufficient new clients as a result. He told the branch manager that he might have to leave his job and blamed Prudential for his loss of commission income. Based on extensive experience with brokers, the branch manager assumed Claimant had accepted employment with another brokerage firm. Claimant then questioned the manner in which the branch manager allocated orphaned accounts to brokers. Claimant suggested that the allocations "smelled of discrimination." Prudential Securities terminated Claimant on April 21, 1994, citing "non-compliance related" as its reason for the termination.

Approximately three weeks later, Prudential demanded that Claimant pay the amount due under the terms of the Promissory Notes. Claimant refused, claiming the loan was accelerated and fully satisfied according to the terms set forth in the Agreement. Thereafter, a second U-5 was filed on May 4, 1994 by Prudential which stated Claimant was terminated for "poor performance-non compliance related."

Prior to his termination, Claimant was the Broker for the \$900,000.00 Chaney account. The trading which took place in the account was aggressive. Claimant traded approximately two-thirds of this amount in securities, including options and on margin. The Chaney's wrote Prudential on March 30, 1994, approximately a month prior to Claimant's termination, with a direct request that no more sales or purchases take place in their account. The Chaney's moved their account to another brokerage firm and shortly thereafter filed a claim against Prudential. After an investigation, Prudential determined Claimant had excessively traded and made unsuitable investments in the Chaney account. In settlement of the Chaney claim, Prudential paid \$220,000.00 to the Chaney's. The Chaney's signed an agreement to assign and subrogate to Prudential their claim against Claimant while employed at Prudential. As required, the U-5 was amended in March 1995, and reflects the settlement of a consumer-initiated complaint.

ISSUES FOR RESOLUTION

1. Claimant filed a claim against Prudential claiming the termination was in retaliation for his complaint of discrimination about the distributions of accounts. The discharge of an employee in retaliation for opposing discriminatory practices is a violation of public policy. The Claimant does not need to show that retaliation was the sole or even a principal reason for discharge, only that the retaliatory motive contributed to the termination. Claimant claims a *prima facie* case of discrimination was established and explanations offered by Prudential were pretextual.
2. Prudential filed a Counterclaim against Claimant to recover the full amount paid the Chaney's in settlement of their claim against Claimant. Claimant contends the Chaney claim was not properly assigned to Prudential and that Prudential breached a duty to supervise the Chaney account. Prudential also contends Claimant is legally obligated to repay the loans pursuant to the Promissory Notes in the amount of approximately \$130,000.00, plus interest. With respect to Claimant's charge of retaliation, Prudential contends Claimant failed to exhaust his administrative remedies with the Department of Fair Employment and Housing by not checking the box on the form to indicate retaliation. Prudential argued

that Claimant is barred from asserting this claim

RELIEF REQUESTED

Claimant requests compensation for all loss of wages, compensation for emotional distress, punitive damages and attorneys fees.

Counterclaimant requests \$129,875.00 with interest from April 21, 1994 due on the Promissory notes and \$220,000.00, plus interest from March 27, 1995. Counterclaimant also request attorneys fees and the costs incurred in the collection of the amounts due under the Promissory notes.

DECISION

After the course of hearings and considerable deliberation, the Arbitrators have made the following determinations based on the evidence and testimony presented:

A. ON THE CLAIM:

Prudential's claim that Claimant failed to exhaust his administrative remedies is rejected. Under the facts of this case, Counterclaimant failed to persuade the Panel that the charge was barred and should be dismissed.

In a claim based on retaliation, the claimant must make a prima facie case showing that the employment decision was at least in part based on a discriminatory motivation. If that showing is made, the burden then shifts to the employer to show that it had a legitimate, business-related reason for its action. In the case at hand, Claimant failed to establish that his termination was in part based on a discriminatory motive.¹ Claimant also failed to establish that his assertion that the account distribution "smelled of discrimination" was made in good faith. Rather, he was terminated in the course of a discussion with the Branch Manager which was devoid of retaliatory conduct. There is no evidence that the termination on April 21, 1994, by Prudential was retaliatory.

B. ON THE COUNTERCLAIM:

1. Prudential's claim for moneys owed pursuant to the terms of the Promissory Notes was established. Therefore, the Panel finds Prudential is entitled to \$129,875.00² with interest. The claim for attorneys fees and cost is denied.
2. The Chaney claim against Claimant assigned to Prudential is denied. Prudential is not entitled to recover the \$220,000.00 or any additional amount it paid to the Chaney's in settlement of their claim.

¹ During Claimant's employment at Prudential he was afforded many favors outside the normal benefits provided brokers at Prudential by the branch manager (i.e: higher commission rate extended, loan for taxes, personal account covered many times when it lacked insufficient funds.)

² Pursuant to PCX Rule 12.29(h), monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If the award is not paid within thirty (30) days, or if the award is the subject of a motion to vacate which is denied, interest shall accrue at the legal rate from the date of the award.

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3. Claimant and Respondents are assessed forum fees and pre-hearing conferences fees in the amount of \$4,000.00 each.³
4. The parties shall bear their own other costs of arbitration, including any and all attorney's fees, filing fees, hearing session deposits, and member surcharge fees.

Date _____

Nancy Hutt, Esq.

Date: _____

Thomas Reese, Esq.

Date: 7/17/2000

Charles J. Lowrey
Charles Lowrey

³ Forum fees are assessed at the rate of \$1,000.00 per hearing session. Pre-hearing conferences held on April 19, 1999 and June 11, 1999 are also assessed at the rate of \$1,000.00 because the full Panel presided at each Pre-hearing conference.