

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Kenneth R. Young

Case No. 99-00947

Names of Respondents

Pruco Securities Corporation
The Prudential Insurance Company of America

REPRESENTATION OF PARTIES

For Kenneth R. Young, ("Young"), hereinafter referred to as "Claimant": Elihu Berman, P.A., Clearwater, Florida.

For Pruco Securities Corporation ("Pruco") and The Prudential Insurance Company of America ("Prudential"), hereinafter collectively referred to as "Respondents": Michael A. Schlanger, Esq. of the law firm of Sonnenschein Nath & Rosenthal, Washington, D.C.

CASE INFORMATION

Statement of Claim filed on or about: February 26, 1999.

Amended Statement of Claim filed on or about: June 23, 2000.

Claimant signed the Uniform Submission Agreement: February 24, 1999.

Pruco Securities Corp.'s Statement of Answer and Defenses to Claimant's Statement of Claim filed on or about: May 5, 1999.

Appendix of Cases and Authorities to Pruco Securities Corp.'s Statement of Answer and Defenses to Claimant's Statement of Claim filed on or about: May 5, 1999.

The Prudential Insurance Company of America's Statement of Answer and Defenses to Claimant's Statement of Claim filed on or about: June 2, 1999.

Respondents' Joint Amended Statement of Answer and Defenses to Claimant's Statement of Claim filed on or about: September 15, 1999.

Appendix of Exhibits to Respondents' Joint Amended Statement of Answer and Defenses to Claimant's Statement of Claim filed on or about: September 15, 1999.

Respondents' Joint Statement of Answer and Defenses to Claimant's "Amended Statement of Claim" filed on or about: July 11, 2000.

Motion of Respondents to Dismiss the Statement of Claim for Failure to State a Claim filed on or about: July 14, 1999.

Claimant's Response to Motion to Dismiss filed on or about: November 18, 1999.

Respondents' Reply Brief in Support of Their Motion to Dismiss the Statement of Claim for Failure to State a Claim filed on or about: February 1, 2000.

Appendix of Cases and Authorities to Respondents' Reply Brief in Support of their Motion to Dismiss the Statement of Claim for Failure to State a Claim filed on or about: February 1, 2000.

Motion of Respondents to Dismiss with Prejudice Claimant's "Amended Statement of Claim" filed on or about: September 15, 2000.

Claimant's Response to Motion to Dismiss Amended Statement of Claim filed on or about: September 28, 2000.

Reply Brief in Support of Motion of Respondents to Dismiss with Prejudice Claimant's "Amended Statement of Claim" filed on or about: October 2, 2000.

Respondent Pruco signed the Uniform Submission Agreement: May 3, 1999.

Respondent Prudential signed the Uniform Submission Agreement: June 2, 1999.

CASE SUMMARY

Claimant asserted the following: Claimant sought damages related to Prudential's failure to issue him an Agent Emeritus Contract after agreeing to do so in 1993. Claimant alleged Prudential's decision not to issue him an Agent Emeritus Contract was in retaliation for his opposition to improper insurance replacement activity prior to his early retirement. Claimant further sought damages related to Prudential's conduct in inducing the lapse or surrender of insurance policies sold by Claimant for the purpose of improperly replacing them with new products. Claimant alleged these actions deprived Claimant of contractual renewal commissions and constituted intentional and tortious interference with Claimant's contractual and business relationships.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: No such offer to make Claimant an Agent Emeritus in Florida was made; Prudential's decision not to make Claimant an Agent Emeritus was not a retaliatory personnel action; Claimant's workplace misbehavior was harassing, abusive, demeaning and disruptive, and provided ample grounds to deny Claimant an Agent Emeritus Contract; Claimant's claims are barred by the controlling Florida statutes of limitations; and, Claimant's tortious interference claim is improperly based upon Prudential's own "business relationships" with policyholders and must be dismissed.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$500,000.00 plus attorneys' fees, costs and expenses and punitive damages.

Respondents requested a dismissal, with prejudice, of all of Claimant's claims; an award to Respondents of the costs and expenses of this action; the imposition against Claimant of the entirety of the forum fee award for the proceeding; an award to Respondents of attorneys' fees as the "prevailing party" under the attorneys' fee provision of The Florida Private Whistleblower Statute, Fla. Stat. Ann. 448.104; and, the award of such other relief as the

Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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.

On April 27, 2000, the arbitration panel conducted a pre-hearing conference with all parties to address Respondents' motion to dismiss for failure to state a claim. On or about June 5, 2000, the arbitration panel issued an Order which dismissed Claimant's Statement of Claim for failure to state a claim upon which relief could be granted. Further, the Order granted Claimant twenty days from the date of the Order within which to file an Amended Statement of Claim if the Claimant possessed a claim which was not precluded by the defenses previously raised by Respondents. Thereafter, subsequent to Claimant's filing of an Amended Statement of Claim, the arbitration panel conducted an additional pre-hearing conference with all parties to determine how the panel would proceed relative to the Amended Statement of Claim. On or about August 24, 2000, the arbitration panel issued an Order which stated that Respondents were permitted to file any desired motions and supporting memoranda relative to the Amended Statement of Claim on or before September 18, 2000, and the Claimant was permitted to file any desired responsive memoranda on or before September 28, 2000. Thereafter, upon consideration of Respondents' motion to dismiss the Amended Statement of Claim and Claimant's response, the arbitration panel determined to dismiss, with prejudice, Claimant's claims for failure to state a claim upon which relief can be granted.

AWARD

After considering the pleadings, all prior Orders of the Panel, and all motions, responses and replies, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Statement of Claim and Amended Statement of Claim of Claimant are dismissed, with prejudice, for failure to state a claim upon which relief can be granted.

All additional requests for relief not specifically addressed herein are denied.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$500.00 |
|--------------------------|------------|

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, Respondent Pruco Securities Corporation is a member firm.

| | |
|-------------------------|--------------|
| Member surcharge | = \$2,000.00 |
| Pre-hearing process fee | = \$600.00 |
| Hearing process fee | = \$3,500.00 |

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|------------------|
| Three Pre-hearing sessions with Panel x \$1,000.00 | = \$3,000.00 |
| Pre-hearing conferences: April 14, 2000 | 1 session |
| April 27, 2000 | 1 session |
| <u>August 8, 2000</u> | <u>1 session</u> |
| Total Forum Fees | = \$3,000.00 |

The Panel has assessed the total forum fees of \$3,000.00 to Respondent Pruco.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

| | |
|---|-------------------|
| Initial Filing Fee | = \$500.00 |
| Total Fees | = \$500.00 |
| <u>Less payments</u> | <u>= \$500.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$0.00 |

Respondent Pruco be and hereby is solely liable for:

| | |
|-------------|--------------|
| Member Fees | = \$6,100.00 |
|-------------|--------------|

| | |
|---|---------------------|
| Forum Fees | = \$3,000.00 |
| Total Fees | = \$9,100.00 |
| <u>Less payments</u> | <u>= \$2,625.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$6,475.00 |

All balances are due and payable to NASD Dispute Resolution, Inc. within thirty days of the date of service of the Award.

Concurring Arbitrators' Signatures

_____/s/_____
Guyte P. McCord, III, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Richard Lee Ashton, CPA
Public Arbitrator

Signature Date

_____/s/_____
Timothy C. Voit
Industry Arbitrator

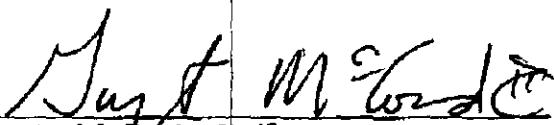
Signature Date

November 16, 2000
Date of Service (For NASD-DR office use only)

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Public Arbitrator, Presiding Chair

11/8/00
Signature Date

Richard Lee Ashton, CPA
Public Arbitrator

Signature Date

Timothy C. Voit
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

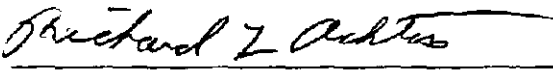
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Concurring Arbitrators' Signatures

Guyte P. McCord, III, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Richard Lee Ashton, CPA
Public Arbitrator

Nov. 10, 2000

Signature Date

Timothy C. Voit
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

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Guyte P. McCord, III, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard Lee Ashton, CPA
Public Arbitrator

Signature Date


Timothy C. Voit
Industry Arbitrator

11-7-2000
Signature Date

Date of Service (For NASD-DR office use only)