

Consent Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Gregg A. Kall, (Claimant) vs. Prudential Insurance Company of America, Inc. and Frank A. Ciambrone, Jr. (Respondents)

Case Number: 99-01359

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Gregg A. Kall, hereinafter referred to as "Claimant": James F. Keegan, Esq., Bendit Weinstock, West Orange, NJ.

Respondents, Prudential Insurance Company of America ("Prudential") and Frank A. Ciambrone, Jr. ("Ciambrone"), hereinafter collectively referred to as "Respondents": J. Michael Riordan, Esq., Bressler, Amery & Ross, Morristown, NJ.

CASE INFORMATION

Statement of Claim filed on or about: March 19, 1999.

Claimant signed the Uniform Submission Agreement: March 18, 1999.

Statement of Answer filed by Respondents on or about: July 30, 1999.

Prudential signed the Uniform Submission Agreement: July 29, 1999.

Ciambrone signed the Uniform Submission Agreement: July 29, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: false and defamatory statements on Claimant's Form U-5; tortious interference with Claimant's reputation, business opportunities, and ability to obtain employment in the industry; wrongful termination; and failure to deal fairly and in good faith with Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the applicable statutes of limitation including, inter alia, those governing the claims asserted as well as pursuant to the parties' Collective Bargaining Agreement ("CBA"); Claimant's claims are barred by the Statute of Frauds, Parol Evidence Rule, and the express written provisions of the parties' written agreements; Claimant's claim of tortious interference is barred because he does not allege and cannot prove that any third party interfered with Claimant's prospective

economic opportunity; Claimant's injuries or damages, if any, are due to the acts and omissions of third parties over whom the answering Respondent has no control or right to control; Claimant's claims lack any basis in law or in fact; Claimant has failed to diligently mitigate his alleged damages; attorneys' fees are not recoverable by Claimant; Claimant is barred by the doctrines of unclean hands, estoppel, ratification, and accord and satisfaction; Respondents did not breach any obligation allegedly imposed by operation of law or contract; Claimant has received payment of all money or benefits allegedly due from Respondents; Respondents acted in good faith, without malice or reckless indifference to Claimant and in the exercise of an equal or superior right in connection with Claimant's employment and the interpretation of Claimant's alleged rights under the parties' CBA; Claimant cannot recover punitive damages as a matter of law; Respondents' actions with respect to Claimant were taken for legitimate reasons, in good faith, reasonably, and in accordance with any and all applicable laws, rules, regulations, and procedures; Claimant's claims are preempted pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185(a) and barred for failure to exhaust administrative remedies provided for in the parties' CBA; Claimant was an employee at will who could be terminated at any time for any reason; all Respondents' statements regarding Claimant, including those in the Termination Letter and Form U-5, were truthful; all Respondents' statements made in connection with the termination of Claimant's employment, including those in the Form U-5, were made without malice and in good faith; an absolute or at least qualified privilege attaches to any information disseminated by Respondents regarding Claimant; there was no publication of the Termination Letter or Form U-5 other than as required by law; Claimant's claims are barred because he agreed to release Prudential and its agents of any damages resulting from the company's release of information in connection with his employment; and any claims for personal injuries are governed by and barred by the exclusivity provisions of the New Jersey Workers' Compensation Act.

RELIEF REQUESTED

Claimant requested that the Panel render judgement as follows:

- A. Requiring Prudential to withdraw the Form U-5 previously filed with the NASD, and issue a replacement Form U-5 containing no reference to any internal investigation of improper or unlawful action by Kall, and expunge from the NASD file any record of the original Form U-5 and investigation based upon it;
- B. Awarding compensatory damages against Prudential and Ciambone for wrongful termination of Claimant's employment, wrongful filing of the Form U-5, and for the injury to the reputation of Claimant as a result of publication by Prudential and Ciambone of false information relating to the termination of Claimant's employment;

- C. Awarding compensatory damages against Prudential and Ciambrone for intentional interference with Claimant's application for unemployment benefits;
- D. Awarding punitive or exemplary damages;
- E. Awarding interest, attorneys' fees, and costs; and
- F. For such further relief as may be deemed appropriate.

Respondents requested that the Panel dismiss Claimant's Statement of Claim with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated December 7, 2000, Claimant informed NASD Dispute Resolution, Inc. that he had settled his claims with Respondents. In connection with said settlement, the parties requested that the Panel review and sign their Consent Award, attached hereto as Exhibit "A".

Upon confirmation of the attached Consent Award by a court of competent jurisdiction, NASD Regulation, Inc. shall comply with the terms of the Consent Award.

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.

FEES

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	= \$ 250.00
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Member Fees

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

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Nov. 9 & 10, 2000, adjournment by all parties	= \$ 500.00 each
Nov. 30, 2000 & Dec. 1, 2000, adjournment by Respondents	= \$1,000.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 22, 2000	1 session
November 9, 2000	1 session

Two (2) Pre-hearing sessions with Panel x \$1,000.00	= \$2,000.00
Pre-hearing conferences: March 16, 2000	1 session
August 7, 2000	1 session
Total Forum Fees	= \$2,900.00

1. The Panel has assessed \$1,450.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,450.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$1,450.00
Total Fees	= \$2,200.00
Less payments	= \$2,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 200.00
2. Pruco be and hereby is solely liable for:

Member Fees	= \$3,800.00
Total Fees	= \$3,800.00
Less payments	= \$3,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00

3. Prudential be and hereby is liable for:

Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	= <u>\$2,000.00</u>
Total Fees	= \$2,600.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,600.00

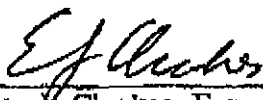
4. Respondents be and hereby are jointly and severally liable for:

Adjournment Fees	= \$1,500.00
<u>Forum Fees</u>	= <u>\$1,450.00</u>
Total Fees	= \$2,950.00
<u>Less payments</u>	= <u>\$1,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,950.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Evan J. Charkes, Esq.
Industry Arbitrator, Presiding Chair

1/16/01

Signature Date

Noel B. Berman, Esq.
Public Arbitrator

Signature Date

Ira L. Blankstein, Esq.
Public Arbitrator

Signature Date

January 22, 2001


Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

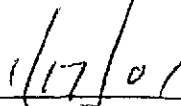
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Evan J. Charkes, Esq.
Industry Arbitrator, Presiding Chair

Signature Date



Noel B. Berman, Esq.
Public Arbitrator



Signature Date

Ira L. Blankstein, Esq.
Public Arbitrator

Signature Date

January 22, 2001
Date of Service (For NASD office use only)

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Evan J. Charkes, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Noel B. Berman, Esq.
Public Arbitrator

Signature Date

Ira L. Blarkstein, Esq.
Public Arbitrator

1/17/01
Signature Date

January 22, 2001

Date of Service (For NASD office use only)