

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Carty & Co., Inc.

Case No. 99-04510

Names of Respondents

Prudential Securities, Inc.
Mark M. Ihrie

REPRESENTATION OF PARTIES

For Claimant: John J. Heflin, III, Esq. of Bourland, Heflin, Alvarez & Minor, PLC, Memphis, TN.

For Respondents Prudential Securities, Inc. ("Prudential") and Mark M. Ihrie ("Ihrie"):
Michael Richards, Esq. of Baker, Donelson, Bearman & Caldwell, Memphis, TN.

CASE INFORMATION

Statement of Claim filed on or about October 5, 1999.

Claimant signed the Uniform Submission Agreement on September 30, 1999.

Joint Statement of Answer filed by Respondents on or about December 6, 1999.

Respondents Prudential and Ihrie did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimant alleged the following: that subsequent to Ihrie's resignation from his employment with Carty, Carty discovered that Ihrie had willfully violated his written employment agreement with Carty and violated fiduciary duties and duties of loyalty owed to Carty; that Ihrie had misappropriated Carty's customer information; that Ihrie and Prudential were using Carty's customer information to solicit Carty's customers; that Carty was damaged as a result of these actions; and, that Carty obtained injunctive relief in state court barring Ihrie from using Carty's proprietary and confidential information and from contacting Carty's clients, pending resolution of Carty's claims against Ihrie and Prudential in arbitration.

Unless specifically admitted in its Answer, Respondents denied the allegations contained in the Statement of Claim and alleged the following: that Ihrie did not have access to any trade secrets; that any records Ihrie had in his possession when he left Carty were returned immediately after the state court action was filed; that the records were returned before Ihrie

was in a position to transact any business at Prudential; that Carty has effectively prevented Ihrie from competing for the customers he had developed relationships with while employed at Carty; and, that Carty has also hired brokers from competitors, notwithstanding non-compete and confidentiality agreements.

RELIEF REQUESTED

Claimant requested the following: compensatory damages of not more than one million dollars; a permanent injunction against Ihrie and Prudential; the return of all documents and data compilations; an order restraining Prudential and Ihrie from using Carty's documents and information; an order enjoining Ihrie from contacting, soliciting or transacting any business with any customer of Carty, from assisting any person in the conduct of business with any Carty customers, from engaging in the purchase or sale of financial investments or engaging in any other business activity which is competitive with Carty until the expiration of eighteen months from September 24, 1999, and from otherwise violating Ihrie's employment agreement with Prudential; an order enjoining Prudential from soliciting any employees of Carty to provide Prudential with Carty customer information or from accepting or using any such information; reimbursement of its fees and expenses; and, such other, further relief to which it is entitled.

Respondents requested that the injunction entered by the Panel be dissolved, and that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

On October 21, 1999, the interim injunctive relief arbitrator, Chairperson Marlow, entered an Order which adopted the Injunction as modified and issued by Judge Floyd Peete of the Chancery Court of Shelby County Tennessee on October 7, 1999. Further, the Chairperson ordered that said Injunction shall remain in full force and effect until the hearing on the merits before the full panel.

At the conclusion of the hearing on the merits, the parties agreed that the Panel would have the authority to determine the entitlement to, and the amount, if any, of attorneys' fees to be awarded in this matter.

Respondents Prudential and Ihrie did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Ihrle and Prudential shall be enjoined from contacting or conducting any business with any of the customers of Ihrle while he was employed at Carty. This injunction shall expire on January 1, 2000. Ihrle will be permitted, however, to continue to work at Prudential during the period of this injunction.

Respondents are liable, jointly and severally, and shall pay to the Claimant compensatory damages in the sum of \$95,000.00.

Respondents are liable, jointly and severally, and shall pay to the Claimant attorneys' fees in the sum of \$20,610.06.

Any and all other relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1250.00
Interim injunctive relief surcharge	= \$2500.00

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, the member firms, Carty and Prudential, are parties.

Member surcharge	= \$2000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3500.00

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:

One (1) interim injunctive relief session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: Date October 21, 1999 1 session	

Two (2) Hearing sessions x \$1200.00 = \$2400.00
Hearing Date: Date December 1, 1999 2 sessions
Total Forum Fees = \$2850.00

The Panel has assessed \$2850.00 of the forum fees to Prudential.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1250.00
Member Fees	= \$6100.00
<u>Interim injunctive relief surcharge</u>	<u>= \$2500.00</u>
Total Fees	= \$9850.00
<u>Less payments</u>	<u>= \$6950.00</u>
Balance Due NASD Regulation, Inc.	= \$2900.00

Respondent Prudential be and hereby is solely liable for:

Member Fees	= \$6100.00
<u>Forum Fees</u>	<u>= \$2850.00</u>
Total Fees	= \$8950.00
<u>Less payments</u>	<u>= \$2000.00</u>
Balance Due NASD Regulation, Inc.	= \$6950.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Jack F. Marlow, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/

E. Steve Scales
Industry Arbitrator

Signature Date

/s/

Nigel W. Sadd
Industry Arbitrator

Signature Date

January 18, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures



Jack F. Marlow, Esq.
Public Arbitrator, Presiding Chair

1/14/00
Signature Date

E. Steve Scales
Industry Arbitrator

Signature Date

Nigel W. Sadd
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Jack F. Marlow, Esq.
Public Arbitrator, Presiding Chair

Signature Date



E. Steve Scales
Industry Arbitrator



Signature Date

Nigel W. Sadd
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

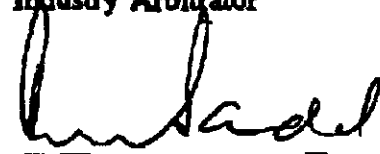
Concurring Arbitrators' Signatures

Jack F. Marlow, Esq.
Public Arbitrator, Presiding Chair

Signature Date

B. Steve Scales
Industry Arbitrator

Signature Date



Nigel W. Sadd
Industry Arbitrator

1/14/2000
Signature Date

Date of Service (For NASD office use only)