

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

Case No. 99-04768

Name of Respondent

Roy Neil Apple

REPRESENTATION OF PARTIES

For Prudential Securities, Inc. ("Prudential"), hereinafter referred to as "Claimant": Joseph C. Rosa, Associate Vice President, Assistant General Counsel, Prudential Securities, Inc. until a substitution of counsel on June 9, 2000. Thereafter, Prudential was represented by Steven P. Gomberg, Esq., Rooks, Pitts and Poust, Chicago, Illinois.

For Roy Neil Apple ("Apple"), hereinafter referred to as "Respondent": Leslie M. Apple, Esq. and Timothy P. Morrison, Esq., Whiteman Osterman & Hanna, Albany, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 22, 1999.

Claimant signed the Uniform Submission Agreement: October 14, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: March 1, 2000.

Respondent signed the Uniform Submission Agreement: February 24, 2001.

Statement of Answer to Counterclaim filed by Claimant on or about: June 27, 2000.

CASE SUMMARY

Claimant asserted the following: Claimant and Respondent entered into an employment agreement and executed a promissory note. Concurrent with the execution of the employment agreement, Claimant loaned Respondent the sum of \$214,615.00 plus interest at 7% per annum. The loan was to be repaid in 43 equal monthly installments of \$4,991.05. The loan was to become immediately due and payable upon termination of Respondent's employment with Claimant. Pursuant to the employment agreement, Claimant was obligated to pay Respondent transitional compensation in the amount of \$214,615.00 in 43 equal monthly installments of \$4,991.05. The terms of the employment agreement stated that Respondent was not entitled to unearned transitional compensation upon resignation for cause. Respondent resigned from Claimant on September 3, 1999. The balance of

\$105,564.00 immediately became due and owing.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following: Through its unprofessional, unethical and threatening actions and potentially illegal conduct, Claimant prevented Respondent from performing under the Note and employment agreement. Claimant's conduct created a legal and ethical obligation under which Respondent had to resign from Claimant.

Further, Respondent asserted a counterclaim which alleged the following: Claimant's branch manager created an unprofessional environment in the office by repeatedly swearing in the office, repeatedly exhibiting temper tantrums, embarrassing Respondent in front of his fellow employees by "betting" the office members that Respondent would not pass Claimant's branch manager assessment evaluation on the "first cut," and reacting to Respondent's efforts to take a problem to the branch manager by swearing at Respondent. Further, Claimant's branch manager defamed Respondent. In addition, Claimant unethically and illegally pressured Respondent to promote Claimant's proprietary mutual fund products over other investment products without making required disclosures to customers. Claimant, through its actions, caused Respondent to lose current and future production income.

Unless specifically admitted in its Answer to the Counterclaim, Claimant denied the allegations made in the counterclaim and asserted the following: Respondent voluntarily left Claimant to join a competitor. Any statement made by Claimant's branch manager was an ambiguous statement of opinion, which is not actionable under a claim for defamation.

RELIEF REQUESTED

Claimant requested compensatory damages of \$105,564.00, interest during the term of the note, interest at the rate of 7% per annum from the date of default to the date of disposition of this matter, plus the costs of collection and of this proceeding, including attorney's fees as agreed to under the terms of the Note and any other relief the arbitrators deemed just. In addition, Claimant requested that all claims as set forth in the counterclaim be dismissed in their entirety.

Respondent requested that all claims against him be dismissed in their entirety. In his counterclaim, Respondent requested compensatory damages of \$65,000.00, as well as damages for defamation and other relief that the arbitrators deemed just.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the

post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant the sum of \$109,000.00 as compensatory damages plus interest at the rate of 12% per annum from September 3, 1999 until the date of payment of the Award.

The counterclaim of Respondent is dismissed.

Each party shall bear their respective costs, including attorneys' fees.

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

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	= \$1,000.00
Counterclaim filing fee	= \$ 225.00

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, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

November 9 through November 10, 2000, adjournment requested by Respondent. The request was denied by the panel.

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) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: October 6, 2000	1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00
Pre-hearing conference: July 5, 2000 1 session

Seven (7) Hearing sessions x \$1,125.00 = \$7,875.00
Hearing Dates: November 9, 2000 2 sessions
November 10, 2000 2 sessions
January 30, 2001 2 sessions
January 31, 2001 1 session

Total Forum Fees = \$9,450.00

The Panel has assessed \$4,725.00 of the forum fees to Claimant.
The Panel has assessed \$4,725.00 of the forum fees to Respondent.

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.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
Forum Fees	= \$ 4,725.00
Total Fees	= \$10,325.00
<u>Less payments</u>	<u>= \$6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 225.00
Forum Fees	= \$4,725.00
Total Fees	= \$4,950.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,975.00

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

receipt of the Award by the parties.

Concurring Arbitrators' Signatures

/s/

Martin Greenbaum, J.D.
Public Arbitrator, Presiding Chair

Signature Date

/s/

Edward Aptaker, Esq.
Public Arbitrator

Signature Date

/s/

Karen Z. Fischer
Industry Arbitrator

Signature Date

March 14, 2001
Date of Service (For NASD-DR office use only)

receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Martin Greenbaum
Martin Greenbaum, J.D.
Public Arbitrator, Presiding Chair

14 March 2001
Signature Date

Edward Aptaker, Esq.
Public Arbitrator

Signature Date

Karen Z. Fischer
Industry Arbitrator

Signature Date

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

receipt of the Award by the parties.

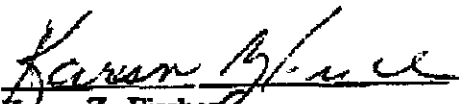
Concurring Arbitrators' Signatures

Martin Greenbaum, J.D.
Public Arbitrator, Presiding Chair

Signature Date

Edward Aptaker, Esq.
Public Arbitrator

Signature Date



Karen Z. Fischer
Industry Arbitrator



Signature Date

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