

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Olga B. Emanuel (Claimant) v. The Prudential Insurance Company of America, Peter Allegrini, and Mendel Melzer (Respondents)

Case Number: 00-02964

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant Olga B. Emanuel ("Emanuel") hereinafter referred to as "Claimant": Jeffrey L. Liddle, Esq., Liddle & Robinson, L.L.P., New York, NY.

Respondents The Prudential Insurance Company of America ("Prudential"), Peter Allegrini ("Allegrini"), and Mendel Melzer ("Melzer") hereinafter collectively referred to as "Respondents": John J. Peirano, Esq. and James Lidon, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP, formerly known as Carpenter, Bennett & Morrissey, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: July 13, 2000.
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer and Counterclaims filed by Respondents Prudential and Melzer on or about: October 18, 2000.

Statement of Answer filed by Respondent Allegrini on or about: November 22, 2000.

Joint Amendment to Statement of Answer and Counterclaims filed by Respondents Prudential and Melzer on or about: January 9, 2001.

Respondent Prudential signed the Uniform Submission Agreement: October 17, 2000.

Respondent Melzer signed the Uniform Submission Agreement: October 11, 2000.

Respondent Allegrini signed the Uniform Submission Agreement: November 2, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: age discrimination; retaliation; defamation; breach of contract; wrongful termination; and failure to pay severance benefits.

Unless specifically admitted in their Answer and their Amendment to Statement of Answer, Respondents Prudential and Melzer denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In their Counterclaims, Respondents Prudential and Melzer asserted the following causes of action: breach of duty of loyalty; fraudulent misrepresentation; and conversion.

Unless specifically admitted in his Answer, Respondent Allegrini denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

- A. On the claims of discrimination and retaliation under the ADEA, back pay and front pay, in an amount to be determined at hearings, plus liquidated damages, pre-judgment interest, attorneys' fees and costs;
- B. On the claims of discrimination and retaliation under the NJLAD, back pay and front pay, in an amount to be determined at hearings, plus compensatory damages, punitive damages, pre-judgment interest, attorneys' fees and costs;
- C. On the claims against Prudential for wrongful discharge, compensatory damages in an amount to be determined at hearings, punitive damages, and pre-judgment interest;
- D. On the claim of defamation against Respondents, compensatory damages in an amount to be determined at hearings, punitive damages, and pre-judgment interest;
- E. On the claims against Prudential for failure to pay severance compensation in violation of ERISA, compensatory damages, pre-judgment interest, attorneys' fees and costs;
- F. On the claim against Prudential for failure to pay severance compensation in breach of an implied agreement, compensatory damages and pre-judgment interest;
- G. Such other and further relief as this Panel deems just and proper.

Respondents Prudential and Melzer requested dismissal of the Statement of Claim and on their Counterclaims requested:

Count One

- A. That Claimant be required to compensate Prudential for the amount of money it reimbursed the mutual fund she managed as a result of her direct brokerage;
- B. The Claimant be required to return to Prudential the compensation she received, including salary and bonuses, during the period she improperly disclosed Prudential's confidential and proprietary information (October 1993 to May 1995) and the period she directed brokerage (April 1996 – December 1996);
- C. That Prudential be granted such other and further relief as this Panel deems just and equitable.

Count Two

- A. That Claimant be required to compensate Prudential for the amount of money it reimbursed the mutual fund she managed as a result of her direct brokerage;
- B. That Claimant's conduct be determined willful and malicious and that Prudential be awarded punitive damages in an amount necessary to punish Claimant and deter others from engaging in similar misconduct;
- C. That Prudential be granted such other and further relief as this Panel deems just and equitable.

Count Three

- A. That Prudential be awarded compensatory damages in an amount to be determined at hearing in this matter;
- B. That Claimant's conduct be determined willful and malicious and that Prudential be awarded punitive damages in an amount necessary to punish Claimant and deter others from engaging in similar misconduct;
- C. That Prudential be granted such other and further relief as this Panel deems just and equitable.

Respondent Allegrini requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondents made a motion to dismiss, which was denied.

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

1. Respondent Prudential is solely liable for and shall pay Claimant compensatory damages in the amount of \$450,000.00.
2. Respondent Prudential is solely liable for and shall pay to Claimant interest at the rate of 9% starting from January 13, 1997 until payment of the award.
3. Respondent Prudential is solely liable for and shall pay to Claimant attorneys' fees in the amount of \$150,000.00 based on all parties' requests for attorneys' fees as set forth in their pleadings and post-hearing briefs.
4. Respondent Prudential is solely liable for and shall pay to Claimant the amount of \$250.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
5. The Panel recommends the expungement of the "Yes" answer to question number 15 (i.e. the internal review disclosure question) and any corresponding details reported on the accompanying U-5 Internal Review Disclosure Reporting Page (DRP) on the Form U-5 submitted to CRD by The Prudential Insurance Company of America (CRD#680) on or about April 15, 1997, on behalf of Claimant Olga Emanuel. The Panel further recommends a change in "Reason for Termination" on the Form U-5. The original reason for termination and any accompanying termination comment should be expunged. The reason for termination should be changed to "Voluntary." Replacement language for the termination comment is not provided, as a "Voluntary" termination does not require a termination comment on the Form U-5. The expungement recommendations are based on the defamatory nature of the information reported on the Form U-5 and contained in Claimant's CRD record. The Panel is making no monetary award on the defamation claim.
6. Respondents Prudential and Melzer's counterclaims are denied in their entirety.
7. Any and all other relief not specifically addressed herein is denied.

ARBITRATORS' REPORT

The Panel explicitly finds that the claim of age discrimination is without merit.

The Panel finds that Claimant's conduct was professionally inappropriate but that termination was unjustified because of her work record, the treatment by Prudential of other employees, and the fact that the conduct complained of had ceased prior to the internal investigation. Compensatory damages are awarded in the amount of \$450,000.00.

All other claims against Prudential are dismissed. All claims against Allegrini and Melzer are dismissed.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$250.00 |
| Counterclaim 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, The Prudential Insurance Company of America is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

| | |
|--|----------|
| April 9, 2002, adjournment by Claimant | = Waived |
|--|----------|

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$450.00 | = \$ 900.00 |
| Pre-hearing conferences: October 22, 2001 1 session | |
| October 31, 2001 1 session | |
| Two (2) Pre-hearing sessions with Panel @ \$1,000.00 | = \$ 2,000.00 |
| Pre-hearing conferences: June 26, 2001 1 session | |
| November 12, 2002 1 session | |

Fifty-six (56) Hearing sessions @ \$1,000.00 = \$56,000.00

Hearing Dates:

| | |
|--------------------|------------|
| December 11, 2001 | 2 sessions |
| December 12, 2001 | 2 sessions |
| December 13, 2001 | 2 sessions |
| January 8, 2002 | 2 sessions |
| January 10, 2002 | 2 sessions |
| January 11, 2002 | 2 sessions |
| April 30, 2002 | 2 sessions |
| May 29, 2002 | 2 sessions |
| May 31, 2002 | 2 sessions |
| June 3, 2002 | 2 sessions |
| June 7, 2002 | 2 sessions |
| June 21, 2002 | 1 session |
| September 24, 2002 | 2 sessions |
| October 29, 2002 | 2 sessions |
| November 26, 2002 | 2 sessions |
| January 21, 2003 | 2 sessions |
| April 3, 2003 | 2 sessions |
| April 15, 2003 | 2 sessions |
| June 9, 2003 | 2 sessions |
| June 23, 2003 | 2 sessions |
| June 24, 2003 | 2 sessions |
| November 13, 2003 | 2 sessions |
| December 2, 2003 | 2 sessions |
| December 4, 2003 | 2 sessions |
| January 20, 2004 | 2 sessions |
| January 22, 2004 | 2 sessions |
| February 17, 2004 | 2 sessions |
| February 19, 2004 | 1 session |
| May 11, 2004 | 2 sessions |

Total Forum Fees = \$58,900.00

The Panel has assessed all of the forum fees solely against Prudential.

Fee Summary

1. Claimant is solely liable for:

| | |
|----------------------------|---------------|
| <u>Initial Filing Fee</u> | = \$ 250.00 |
| <u>Total Fees</u> | = \$ 250.00 |
| <u>Less payments</u> | = \$ 1,800.00 |
| <u>Refund Due Claimant</u> | = \$ 1,550.00 |

As stated in the Award section above, Respondent Prudential is solely liable for and shall reimburse Claimant for the filing fee.

2. Respondent Prudential is solely liable for:

| | |
|---|---------------------|
| Counterclaim Filing Fee | = \$ 500.00 |
| Member Fees | = \$ 3,800.00 |
| Forum Fees | = \$58,900.00 |
| <hr/> Total Fees | <hr/> = \$63,200.00 |
| Less payments | = \$ 5,300.00 |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$57,900.00 |

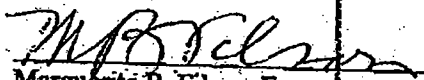
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|----------------------------|---|------------------------------------|
| Marguerite B. Filson, Esq. | - | Public Arbitrator, Presiding Chair |
| Melvin Steuerman | - | Public Arbitrator |
| Susan C. Lushing, Esq. | - | Public Arbitrator |

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.



Marguerite B. Filson, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Melvin Steuerman
Public Arbitrator

Signature Date

Susan C. Lushing, Esq.
Public Arbitrator

Signature Date

July 8, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Marguerite B. Filson, Esq.
Melvin Steuerman
Susan C. Lushing, Esq.

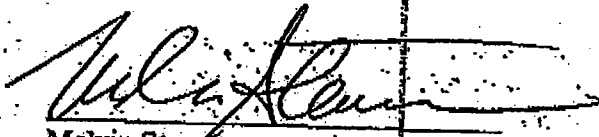
Public Arbitrator, Presiding Chair
Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

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Marguerite B. Filson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Melvin Steuerman
Public Arbitrator

7/6/04

Signature Date

Susan C. Lushing, Esq.
Public Arbitrator

Signature Date

July 8, 2004

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ARBITRATION PANEL

Marguerite B. Filson, Esq.
Melvin Steuerman
Susan C. Lushing, Esq.

Public Arbitrator, Presiding Chair
Public Arbitrator
Public Arbitrator

Concurring Arbitrators' Signatures

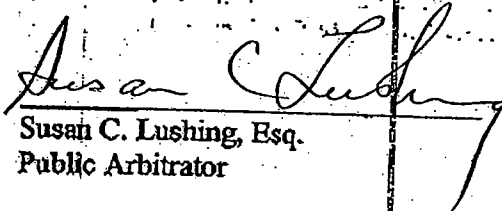
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Marguerite B. Filson, Esq.
Public Arbitrator, Presiding Chairperson

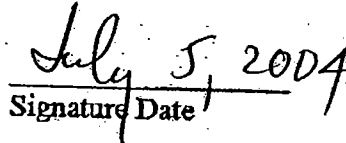
Signature Date

Melvin Steuerman
Public Arbitrator

Signature Date



Susan C. Lushing, Esq.
Public Arbitrator



Signature Date

July 8, 2004

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