

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Maureen Dowe
Elvie Moore
Esther Buckram

Case Number: 20-01798

vs.

Respondents

Prudential Financial, Inc.
Eric Schwimmer

Hearing Site: New York, New York

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Persons and Non-Member vs. Member and Non-Member

REPRESENTATION OF PARTIES

For Claimants Maureen Dowe (“Dowe”), Elvie Moore (“Moore”), and Esther Buckram (“Buckram”): Max Folkenflik, Esq. and Angela Roper, Esq., Folkenflik & McGerity LLP, New York, New York.

For Respondents Prudential Financial, Inc. (“Prudential”), and Eric Schwimmer: Vincent A. Sama, Esq. and Catherine Schumacher, Esq., Seyfarth Shaw LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2020.

Maureen Dowe signed the Submission Agreement: August 21, 2020.

Elvie Moore signed the Submission Agreement: August 21, 2020.

Esther Buckram signed the Submission Agreement: August 21, 2020.

Joint Statement of Answer filed by Respondents on or about: November 13, 2020.

Prudential Financial, Inc. signed the Submission Agreement: November 13, 2020.

Eric Schwimmer signed the Submission Agreement: November 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unlawful conversion of Claimants’ funds and conspiracy to engage in unlawful conversion; fraud and

conspiracy to commit fraud; breach of fiduciary duty and conspiracy to breach fiduciary duty; aiding and abetting fraud; aiding and abetting breach of fiduciary duty; violation of 42 U.S.C. § 1985(3) conspiring to deprive class plaintiffs of their rights to equal employment guaranteed by Title VII of the 1964 Civil Rights Act to pursue their claims in Federal, State, and Local courts; violation of 42 U.S.C. § 1985(2) conspiring to deprive class plaintiffs of their rights to pursue their claims in Federal, State, and Local courts; and violation of New York Judiciary Law § 487(1).

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages on Counts I-VII in an amount to be proven at the hearing, but no less than (a) \$50,000.00 for Claimant Dowe, \$10,000.00 for Claimant Buckram and \$23,000.00 for Claimant Moore; (b) further damages in an amount to be determined at the hearing, but no less than \$1,000,000.00 for each Claimant; on Count VIII, award each Claimant treble the amount of compensatory damages awarded on the basis of any of the Counts I-VII pursuant to Judiciary Law § 487(1) and 487(2); pre and post judgment interest; costs; attorneys' fees; and such other and further relief as the Panel deems just.

In the Statement of Answer, Respondents requested that the Statement of Claim be denied in its entirety and dismissed with prejudice, with attorneys' fees and costs assessed against the Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Claimants filed a Statement of Claim on June 5, 2020 and an Amended Statement of Claim on August 21, 2020. The original Statement of Claim filed on June 5, 2020 was not served on the Respondents and therefore not considered by the arbitrator.

On June 25, 2021, Claimants filed a Motion to Add Parties. On August 5, 2021, Respondents filed an Opposition to Claimants' Motion to Add Parties. On August 17, 2021, Claimants filed a Reply in Support of the Motion to Add Parties.

On June 25, 2021, Claimants filed a Motion for Partial Summary Judgment. On August 5, 2021, Respondents filed an Opposition to Claimants' Motion for Partial Summary Judgment. On August 17, 2021, Claimants filed Reply in Support of the Motion for Partial Summary Judgment.

On June 25, 2021, Respondents filed a Motion to Dismiss pursuant to Rule 13504 of the Code of Arbitration Procedure ("Code"). On August 5, 2021, Claimants filed an Opposition to the Motion to Dismiss. On August 16, 2021, Respondents filed a Reply in the Support of Motion to Dismiss.

On August 31, 2021, the Panel heard oral arguments on Claimants' Motion to Add Parties; Claimants' Motion for Partial Summary Judgment; and Respondents' Motion to Dismiss. On

September 2, 2021, the Panel denied Claimants' Motion to Add Parties and Motion for Partial Summary Judgment, and granted Respondents' Motion to Dismiss for the reasons stated below:

The Panel recognizes that motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged and may only be granted if the particular circumstances set forth in Rule 12606 are met. Under Rule 12606(A), the Panel would need to find that: "the non-moving party previously released the claims(s) in dispute by a signed settlement agreement and/or written release." Or that "(t)he non-moving party previously brought a claim regarding the same dispute against the same party that was fully adjudicated on the merits and memorialized in an order, judgment, award or decision."

There is no dispute that a settlement agreement and release were executed by the Claimants. Claimant contends that the Panel should look beyond the four corners of the documents and consider Claimants' arguments that the agreements are invalid because they were fraudulently induced.

The Panel has carefully considered Claimants' arguments and concludes that the settlement and release executed by the Claimants, two decades ago, falls squarely within FINRA Rule 13504 (a)(6)(A). The claims brought herein were addressed as part of a settlement that included a broad release. Consideration was paid to each Claimant, moreover, Claimants all executed "Execution and Acknowledgement" agreements specifically confirming that they participated in the complained of ADR process voluntarily and with full understanding of the consequences. Were we to adopt Claimants' argument, a settlement agreement and release could never be the basis of a successful motion so long as a Claimant contended that it was fraudulently induced.

The panel also finds that Claimants' claims are time-barred and that accordingly FINRA Rule 13504(A)(6)(C) provides a basis for dismissal as well. Indeed, Judge Cote, in her decision in *Dowe v. Prudential Financial Inc.*, granted another party's motion to dismiss rejecting virtually the same arguments that Claimants make in their Statement of Claim. That claim was brought, not only against the other party, but Respondents as well. Although Judge Cote granted Respondent Prudential's motion to compel arbitration, there is no question that the Claimants brought the claim against Respondents satisfying the predicate of the Rule. Claimants had the opportunity to fully litigate the statute of limitations arguments, and the Panel defers to her findings, which included a finding that the facts that Claimants rely upon here were discoverable through a reasonable investigation as far back as 2004. Judge Cote's decision was "fully and finally adjudicated on the merits and memorialized in a ...decision," as required by FINRA Rule 13504(A)(6)(C).

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded August 31, 2021 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety with prejudice.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 2,250.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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, as a party, Respondent Prudential Financial, Inc. is assessed the following:

Member Surcharge = \$ 3,600.00

Member Process Fee = \$ 6,800.00

Hearing Session Fees and Assessments

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

Two (2) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 3,000.00

Pre-Hearing Conferences: May 25, 2021 1 session

August 31, 2021 1 session

Total Hearing Session Fees = \$ 3,000.00

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Noah Jonathan Hanft	-	Public Arbitrator, Presiding Chairperson
Leona Beane	-	Public Arbitrator
Linda J. Baer	-	Public Arbitrator

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.

Concurring Arbitrators' Signatures

Noah Jonathan Hanft

Noah Jonathan Hanft
Public Arbitrator, Presiding Chairperson

09/14/2021

Signature Date

Leona Beane

Leona Beane
Public Arbitrator

09/14/2021

Signature Date

Linda J. Baer

Linda J. Baer
Public Arbitrator

09/13/2021

Signature Date

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September 15, 2021

Date of Service (For FINRA Dispute Resolution Services use only)