

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Salomon Smith Barney Inc., (Claimant) vs. Prudential Securities Incorporated and Joseph G. Vitetta, (Respondents)

Case Number: 01-01241

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Salomon Smith Barney Inc., hereinafter referred to as "Claimant": Blythe E. Lovinger, Esq., Kasowitz, Benson, Torres & Friedman LLP, New York, NY.

Respondents, Prudential Securities Incorporated ("Prudential") and Joseph G. Vitetta ("Vitetta"), hereinafter collectively referred to as "Respondents": Meredith Rosen, Esq., Paduano & Weintraub LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 12, 2001.

Claimant signed the Uniform Submission Agreement: March 12, 2001.

Statement of Answer filed by Respondents on or about: April 11, 2001.

Counterclaim filed by Vitetta on or about: April 11, 2001.

Prudential did not sign a Uniform Submission Agreement.

Vitetta did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; conversion of Claimant's proprietary and trade secret rights and interests; misappropriation of trade secrets in violation of New York law; breach of fiduciary duty; aiding and abetting breach of fiduciary duty; tortious interference with business relations; tortious interference with contract; unfair competition; negligent supervision; and breach of agreement to repay promissory notes.

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 in whole or in part because Claimant has sustained no injury arising from the conduct alleged; the Statement of Claim is barred in whole or in part because any and all losses sustained by Claimant were

due to its actions, omissions, or negligence; Claimant has failed to mitigate any damages it may have suffered; Claimant is precluded from any recovery because it has unclean hands; Claimant is precluded from any recovery because the purported policy is void and unenforceable; Claimant is precluded from any recovery because the damages it seeks are necessarily speculative and not recoverable under the law; and Claimant is precluded from seeking any of the equitable relief it demands because of the superior and intervening rights of the investors served by Vitetta.

In his Counterclaim, Vitetta asserted the following causes of action: improper prosecution; defamation; tortious interference; and unfair competition.

### **RELIEF REQUESTED**

Claimant requested that the Panel grant an Order:

1. Directing Vitetta to comply with his written Employment Agreements;
2. Enjoining Vitetta, directly or indirectly, whether alone or in concert with others, including any officer, agent, representative, and/or employee of Prudential, from breaching his written agreements and other written covenants with Claimant by:
  - a. Utilizing or disclosing in any way Claimant's confidential and/or proprietary information and trade secrets, including without limitation, client names, addresses, and financial information, for any purpose;
  - b. Utilizing in any way or furnishing to any third party any of the documents and other information misappropriated by Vitetta from Claimant, or extracts or copies thereof; and
  - c. Soliciting, directly or indirectly, any of Claimant's customers who he learned of during his employment with Claimant, other than those clients which he may have brought with him and for whom he was the broker of record at his prior employer and, further, from servicing or accepting any business or account transfers from improperly solicited customers of Claimant;
3. Directing Vitetta and his agents, employees, and representatives to return to Claimant within 24 hours of the Order all documents, computerized materials, copies, and/or extracts thereof, wrongfully removed from Claimant;
4. Awarding Claimant damages in an amount not presently ascertainable;
5. Awarding all commissions, compensation, profits, monies, accruals, increments, or other benefits derived from or received by Respondents or any agents or affiliates as a result of their unlawful conduct in connection with any and all transactions engaged in by present or former clients of Claimant;
6. Awarding such costs, interests, and reasonable attorneys' fees as may be allowed in connection with this action;

7. Awarding Claimant amounts due under Vitetta's Back-End Bonus Promissory Note Forgivable Loan Agreement, together with interest accruing from the date of termination at the rate of ten percent per annum;
8. Awarding Claimant amounts due under Vitetta's Promissory Note Forgivable Loan Agreement, together with interest accruing from the date of termination at the rate of ten percent per annum; and
9. For such other and further relief as the Panel may deem appropriate.

Respondents requested that Claimant's claim be denied in its entirety, and that an Order be entered:

1. Requiring Claimant to comply with Section 11870 of the NASD Uniform Practice Code and NYSE Rule 412 (which require member firms to cooperate in processing account transfer forms);
2. Enjoining Claimant from interfering with the rights of Vitetta's clients to receive advice and services from him;
3. Requiring Claimant to refrain from filing a Form U-5 falsely indicating that Vitetta has engaged in wrongdoing in connection with his change of employment;
4. Requiring Claimant to pay Vitetta all earned and unpaid compensation and/or benefits;
5. Requiring Claimant to adhere to the provisions of NASD Code of Arbitration Procedure 10106;
6. Declaring that Respondents are not liable to Claimant in law or in equity in any respect as a result of the termination of Vitetta's employment with Claimant, or regarding his employment with Prudential;
7. Granting Vitetta compensatory and punitive damages in an amount to be determined at the hearing; and
8. Granting Respondents such other and further relief as the Panel deems just and proper.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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

During the hearing in this matter, Respondents made a motion to dismiss. After due consideration, the Panel denied said motion.

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

1. Vitetta be and hereby is solely liable for and shall pay to Claimant the sum of \$46,340.90 as compensatory damages, plus interest at the rate of 10% accruing from March 10, 2001 until the Award is paid in full.
2. Prudential be and hereby is solely liable for and shall pay to Claimant the sum of \$750.00 as attorneys' fees for Prudential's failure to proceed with the hearing as ordered by the panel on April 9, 2001.
3. The panel continues but modifies the temporary restraining order in effect since March 27, 2001, as ordered by Justice Herman Cahn of N.Y. State Supreme Court (New York County), Index No. 104950/01, and converts it to a permanent injunction, to expire on March 8, 2002, as follows:
  - a. As to Vitetta's customers specifically referred to him by Claimant and whose names and/or records were turned over to Vitetta by Claimant (customers which Vitetta refers to as "inherited" accounts), Vitetta and Prudential are enjoined from contacting such customers;
  - b. As to the group of customers for whom Vitetta was broker of record before he joined Claimant, the temporary restraining order is hereby dissolved and no permanent injunction is imposed; and
  - c. As to customers for whom Vitetta opened accounts while he was at Claimant's firm and to whom ACAT forms were sent or given on or about March 9, 2001, but who have not yet returned said forms to either Respondent, Vitetta may contact said customers but is enjoined from sending or giving additional ACAT forms or soliciting ones previously sent out to said customers who, if they choose, may initiate the transfer of their accounts from Claimant to Prudential, or not, as they wish.

4. Vitetta's Counterclaim is hereby dismissed in its entirety.
5. All other requests for relief are hereby 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 | = \$ 500.00 |
| Counterclaim filing fee  | = \$ 250.00 |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Salomon Smith Barney Inc. and Prudential Securities Incorporated are parties.

#### **Salomon Smith Barney Inc.**

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

#### **Prudential Securities Incorporated**

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

#### **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:

|   |               |
|---|---------------|
| One (1) Pre-hearing session with a single arbitrator x \$450.00 | = \$ 450.00   |
| Pre-hearing conference: April 17, 2001 1 session                |               |
| One (1) Pre-hearing session with Panel x \$1,000.00             | = \$ 1,000.00 |
| Pre-hearing conference: April 24, 2001 1 session                |               |

Thirteen (13) Hearing sessions x \$1,000.00 = \$13,000.00

|                |                |            |
|----------------|----------------|------------|
| Hearing Dates: | April 9, 2001  | 1 session  |
|                | April 18, 2001 | 2 sessions |
|                | April 20, 2001 | 2 sessions |
|                | May 30, 2001   | 2 sessions |
|                | May 31, 2001   | 2 sessions |
|                | June 1, 2001   | 2 sessions |
|                | June 4, 2001   | 2 sessions |

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Total Forum Fees = \$14,450.00

1. The Panel has assessed \$7,225.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,612.50 of the forum fees against Prudential.
3. The Panel has assessed \$3,612.50 of the forum fees against Vitetta.

#### 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.

1. Claimant, requested tapes, \$90.00.
2. Prudential, requested tapes, \$60.00.

#### Fee Summary

1. Claimant be and hereby is solely liable for:

|   |               |
|---|---------------|
| Initial Filing Fee                        | = \$ 500.00   |
| Injunctive Fee                            | = \$ 2,500.00 |
| Member Fees                               | = \$ 3,800.00 |
| Forum Fees                                | = \$ 7,225.00 |
| <u>Administrative Costs</u>               | = \$ 90.00    |
| Total Fees                                | = \$14,115.00 |
| <u>Less payments</u>                      | = \$ 7,890.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 6,225.00 |

2. Prudential be and hereby is solely liable for:

|   |               |
|---|---------------|
| Member Fees                               | = \$ 3,800.00 |
| Forum Fees                                | = \$ 3,612.50 |
| <u>Administrative Costs</u>               | = \$ 60.00    |
| Total Fees                                | = \$ 7,472.50 |
| <u>Less payments</u>                      | = \$ 0.00     |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 7,472.50 |

3. Vitetta be and hereby is solely liable for:

|   |               |
|---|---------------|
| Counterclaim Filing Fee                   | = \$ 250.00   |
| Forum Fees                                | = \$ 3,612.50 |
| Total Fees                                | = \$ 3,862.50 |
| <u>Less payments</u>                      | = \$ 0.00     |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 3,862.50 |


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

**ARBITRATION PANEL**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| Marti Copleman, Esq. | - | Public Arbitrator, Presiding Chair |
| Diane Getzler, Esq.  | - | Public Arbitrator                  |
| David L. Binhak      | - | Industry 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.

  
\_\_\_\_\_  
Marti Copleman, Esq.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Diane Getzler, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David L. Binhak  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

June 29, 2001

Date of Service (For NASD office use only)



**ARBITRATION PANEL**

|                      |   |                                    |
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| Diane Getzler, Esq.  | - | Public Arbitrator                  |
| David L. Binhak      | - | Industry Arbitrator                |

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Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Diane Getzler, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David L. Binhak  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
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Marti Copleman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

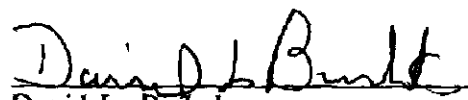
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Diane Getzler, Esq.  
Public Arbitrator

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Signature Date

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David L. Binhak  
Industry Arbitrator

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6/26/01  
Signature Date

June 29, 2001 --

Date of Service (For NASD office use only)