

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

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In the Matter of the Arbitration Between:

Name of the Claimant/CounterRespondent  
Prudential Securities, Inc.

Case Number: 01-02862

Name of the Respondent/CounterClaimant  
Michael E. Egan

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant/CounterRespondent Prudential Securities, Inc. ("Prudential") was represented by Steven P. Gomberg, Esq. of the firm Rooks, Pitts, and Poust located in Chicago, Illinois.

Respondent/CounterClaimant Michael E. Egan ("Egan") was represented by Rosemarie J. Guadnolo, Esq. of the firm Horvath & Leiber, P.C. located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: May 30, 2001.

Prudential signed the Uniform Submission Agreement: June 06, 2001.

Statement of Answer and Counterclaim filed by Egan on or about: September 27, 2001.

Egan signed the Uniform Submission Agreement: August 24, 2001.

Statement of Answer to Counterclaim filed by Prudential on or about: October 09, 2001.

Egan's Motion to Amend Counterclaim filed on or about: July 23, 2002.

Prudential's Response to Egan's Motion to Amend Counterclaim filed on or about: August 07, 2002.

**CASE SUMMARY**

Prudential asserted the following causes of action: Breach of Promissory Note signed in conjunction with terms of Employment.

The causes of action relate to the terms of employment, termination, and repayment of promissory note.

Unless specifically admitted in his Answer, Egan denied the allegations made in the Statement of Claim and asserted the following defenses:

- Prudential is barred from enforcing the terms of the note because it terminated Egan without cause.
- Prudential is barred from enforcing the terms of the note because it breached its duty of good faith and fair dealing by terminating Egan's employment on the basis of a recording made in violation of the Illinois Criminal Code, the use of which also violates the Illinois Criminal Code.
- Prudential is barred from recovery on the note because it has breached the terms of its employment agreement with Egan, which was drafted by Prudential, as was the note signed by Egan. The agreement provides that the "Transitional Compensation" due Egan (which offsets any amounts due on the note) will be accelerated if Prudential terminates Egan without cause.

In his Counterclaim Egan asserted the following causes of action

- The use of a recording in violation of the Illinois Criminal Code as a basis for termination

Unless specifically admitted in its Answer to Counterclaims Prudential denied the allegations made in the Counterclaim and asserted the following defenses:

- The Illinois Eavesdropping Act is intended to apply to Illinois criminal and civil judicial proceedings. It does not apply in NASD arbitrations, which are not bound by rules governing the admissibility of evidence in state or federal proceedings.
- Egan's termination from Prudential was a result of his violation of NYSE Rule 352.

### **RELIEF REQUESTED**

Prudential requested the sum of \$63,796.54 based on Egan's default in the repayment of the loan. Additionally, Prudential requested pre-judgment interest in the amount of \$6,322.91, which had accrued from November 27, 1999 through April 27, 2001, at the rate of 7% per annum, pursuant to the terms of the Agreement and Note. Prudential also requested interest on the above-referenced amount, at the rate of 7% per annum, or \$12.23 per day, from the date of entry of the award until satisfaction thereof. Prudential additionally requested the cost of collection and of this proceeding including attorney's fees as agreed to under the terms of the employment agreement and note. Finally, Prudential requested any other relief as the Panel deem just and proper.

Egan requested dismissal of Prudential's claim and for an award of his attorneys' fees and costs in defending against the claim.

Pursuant to 720 ILCS 5/14-6, Egan requested an entry of an award in the amount of the damages he has suffered as a result of Prudential's use of electronic recordings made in violation of the Illinois Criminal Code and an award of punitive damages. Additionally, he requested attorney's

fees and costs, and an order requiring the deletion of any references to any matters arising from the electronic recordings from Egan's CRD record.

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

The Panel denied Egan's Motion to Amend Counterclaim.

### **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. Any and all claims asserted by Prudential Securities, Inc. against Michael E. Egan are denied in their entirety.
2. Any and all claims asserted by Michael E. Egan against Prudential Securities, Inc. are denied in their entirety.
3. Parties shall bear their own costs.
4. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 250.00

#### **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. Prudential is a member firm.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total	= \$3,100.00

#### **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 at \$450.00	= \$ 900.00
Pre-hearing conferences: January 28, 2002	1 session
October 23, 2002	1 session
Two (2) Pre-hearing sessions with Panel at \$1,000.00	= \$2,000.00
Pre-hearing conferences: February 21, 2002	1 session
July 24, 2002	1 session
Three (3) Hearing sessions at \$1,000.00	= \$3,000.00
Hearing Dates: October 24, 2002	2 sessions
October 25, 2002	1 session
Total Forum Fees	= \$5,900.00

The Panel has assessed \$5,900.00 of the forum fees to Prudential Securities, Inc.

### FEE SUMMARY

1. Prudential Securities, Inc. is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,100.00
Forum Fees	= \$ 5,900.00
Total Fees	= \$10,000.00
Less payments	= \$ 4,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,150.00

2. Michael E. Egan is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 1,250.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 1,000.00

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

### ARBITRATION PANEL

Victor Elting, III, Esq.- Non-Public Arbitrator, Presiding Chairperson  
David O. Juveland, Esq. - Non-Public Arbitrator  
Ruth Hannenberg - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Victor Elting

11/21/02

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Victor Elting, III, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/ David O. Juveland

11/19/02

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David O. Juveland, Esq.  
Public Arbitrator

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Signature Date

/s/ Ruth Hannenberg

11/25/02

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Ruth Hannenberg  
Non-Public Arbitrator

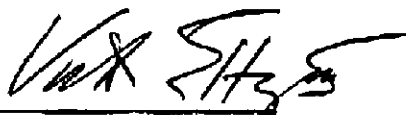
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Date of Service (For NASD Dispute Resolution office use only)

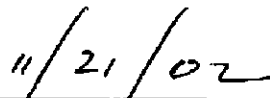
NASD Dispute Resolution, Inc.

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Award Page 5 of 5Concurring Arbitrators' Signatures

Victor Elting, III, Esq.

Public Arbitrator, Presiding Chairperson



Signature Date

David O. Juveland, Esq.

Public Arbitrator

Signature Date

Ruth Hannenberg

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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JUVELAND AND ASSOCIT  
NASD REGULATION

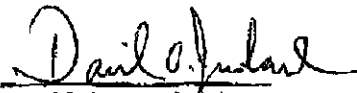
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Award Page 5 of 5

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Victor Elting, III, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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David O. Juveland, Esq.  
Public Arbitrator

Nov. 19, 2002  
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Signature Date

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Ruth Hannenberg  
Non-Public Arbitrator

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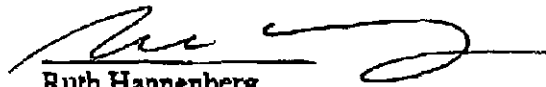
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David O. Juveland, Esq.  
Public Arbitrator

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Ruth Hannenberg  
Non-Public Arbitrator

11-25-02  
Signature Date

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