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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Prudential Securities, Incorporated

Case Number: 02-06466

Name of the Respondent  
Francisco Hernandez

Hearing Site: Boca Raton, Florida

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Nature of Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

For Prudential Securities, Incorporated ("PSI"), hereinafter referred to as "Claimant": Matthew N. Thibaut, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

Respondent Francisco Hernandez ("Hernandez"), appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: October 28, 2002.

Claimant signed the Uniform Submission Agreement: October 9, 2002.

Answer, Affirmative Defenses and Counterclaim filed by Respondent on or about: December 20, 2002.

Respondent signed the Uniform Submission Agreement: December 15, 2002.

Reply to Respondent's Answer, Affirmative Defenses and Counterclaim filed by Claimant on or about: February 24, 2003.

**CASE SUMMARY**

Claimant asserted a cause of action of breach of contract. The cause of action relates to Respondent's failure to repay a promissory note after Respondent terminated his employment with Claimant.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Respondent asserted the causes of action of fraudulent inducement and misrepresentation.

Unless specifically admitted in its Reply, Claimant denied the allegations made in Respondent's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$105,626.12, attorneys' fees and costs, and any other relief that the Panel deemed just and equitable. Additionally, in its Reply, Claimant requested dismissal of the Counterclaim.

Respondent requested compensatory damages of \$177,881.61.

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

During the evidentiary hearing, on or about October 16, 2003, Claimant made an ore tenus motion to dismiss the Counterclaim. The panel denied said motion.

The parties 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:

The Panel finds Respondent liable on the promissory note. As such, Respondent shall pay Claimant compensatory damages of \$80,000.00.

Respondent's Counterclaim is denied in its entirety.

Any and all relief not specifically addressed herein, including Claimant's request for attorneys' fees, is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$1,000.00
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The Counterclaim filing fee was preliminarily waived by the Director of Arbitration. The Panel made a final determination to waive the Counterclaim filing fee.

#### **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, PSI is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

#### **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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: October 10, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: March 28, 2003 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: October 16, 2003 2 sessions	
<b>Total Forum Fees</b>	<b>= \$3,825.00</b>

The Panel has assessed the total forum fees of \$3,825.00 to Claimant.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$10,025.00
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 2,700.00

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

**ARBITRATION PANEL**

<i>Hugh N. Fryer, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Linda M. Granata, Esq.</i>	-	<i>Public Arbitrator</i>
<i>David W. Newman</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signature(s)**

/s/  
Hugh N. Fryer, Esq.  
Public Arbitrator, Presiding Chairperson

10/29/03  
Signature Date

/s/  
Linda M. Granata, Esq.  
Public Arbitrator

10/29/03  
Signature Date

/s/  
David W. Newman  
Non-Public Arbitrator

10/30/03  
Signature Date

10/31/03  
Date of Service (For NASD Dispute Resolution office use only)

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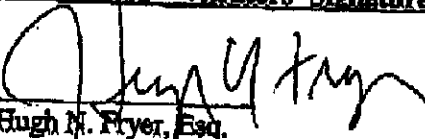
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Hugh N. Fryer, Esq.  
Linda M. Granata, Esq.  
David W. Newman

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

  
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Public Arbitrator, Presiding Chairperson

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<i>David W. Newman</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signature(s)**

Hugh N. Fryer, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

October 29, 2003

  
Linda M. Granata, Esq.  
Public Arbitrator

Signature Date

David W. Newman  
Non-Public Arbitrator

Signature Date

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

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- Public Arbitrator, Presiding Chairperson

Linda M. Granata, Esq.

- Public Arbitrator

David W. Newman

- Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

Hugh N. Fryer, Esq.

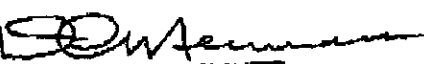
Public Arbitrator, Presiding Chairperson

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Signature Date

Linda M. Granata, Esq.

Public Arbitrator

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Signature Date

  
David W. Newman

Non-Public Arbitrator

10/30/05

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