

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

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-07662

Prudential Securities, Incorporated

Name of the Respondent

Hearing Site: Boca Raton, Florida

David P. Silva

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**REPRESENTATION OF PARTIES**

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

David P. Silva, hereinafter referred to as "Respondent", did not appear in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: December 18, 2002.

Claimant signed the Uniform Submission Agreement: December 5, 2002.

Motion for Default filed by Claimant on or about: May 21, 2003.

Amended Statement of Claim filed by Claimant on or about: July 23, 2003.

Respondent did not file a Statement of Answer or executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the causes of action of breach of contract and unjust enrichment. The causes of action relate to the Promissory Note dated July 28, 2000 entered into between Claimant and Respondent.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$276,129.15, plus attorneys' fees, costs and any other relief deemed just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about July 20, 2003, the day before the evidentiary hearing was scheduled to commence, the Chairperson of the Panel determined that this matter met the criteria for processing in accordance with the default procedures contained in Rule 10314(e) of the Code. More specifically, the case was filed after October 14, 2002; Respondent's registration in the NASD was terminated; and, Respondent did not file a Statement of Answer or executed Uniform

Submission Agreement in this matter. In addition, the Chairperson noted that Claimant had filed a Motion for Default. As such, the Chairperson contacted the other two arbitrators on the Panel, advised them of same and directed them not to appear at the evidentiary hearing on July 21, 2003. In addition, the Chairperson advised the other Panel members that he would render an Award based on the papers submitted.

Thereafter, at the in-person, pre-hearing conference on July 21, 2003, the Chairperson advised Claimant that this case met the criteria for processing under the default procedures contained in Rule 10314(e) of the Code and asked Claimant if it would consent to the Chairperson solely rendering a decision based on the papers submitted. Claimant requested that this case be processed under the default procedures. As Respondent did not appear in this matter, the Chairperson determined that Respondent was properly served with notice of the Statement of Claim, notification of the Chairperson by certified mail, that Respondent is required to submit to arbitration pursuant to the Code and is bound by the determinations of the Chairperson on all issues submitted.

Further, the Chairperson directed Claimant to submit, by not later than August 4, 2003, an Amendment to the Statement of Claim clarifying the amount in dispute and an analysis of the Promissory Note dated July 28, 2000 from the date of inception showing the payments of principal and interest made by Respondent. On or about July 23, 2003, Claimant submitted an Amended Statement of Claim and Promissory Note Analysis. Respondent did not file a response to same.

### **AWARD**

After considering the pleadings and the record in this matter, the Chairperson has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable to Claimant on the claim for breach of contract (promissory note). As such, Respondent shall pay to Claimant compensatory damages in the amount of \$276,129.15, plus pre-judgment interest in the amount of \$33,203.23 from November 1, 2001 until July 21, 2003. Post-judgment interest shall accrue at the legal rate in Florida from the date of the Award until the date of payment of the Award, if the Award is not paid within thirty (30) days of receipt.

Respondent is liable pursuant to the Promissory Note dated July 28, 2000 and shall pay to Claimant attorneys' fees in the amount of \$2,470.23.

Respondent is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein are denied.

### **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 = \$1,000.00

#### **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. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

No requests for adjournments were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred in this matter.

#### **Forum Fees and Assessments**

The Chairperson 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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: June 2, 2003	1 session

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 21, 2003	1 session

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Total Forum Fees	= \$1,575.00
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The Chairperson has assessed the total forum fees of \$1,575.00 to Respondent.

#### **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 are 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

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Total Fees = \$6,200.00

Less payments = \$4,575.00

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Balance Due NASD Dispute Resolution = \$1,625.00

Respondent is solely liable for:

Forum Fees = \$1,575.00

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Total Fees = \$1,575.00

Less payments = \$ 0.00

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Balance Due NASD Dispute Resolution = \$1,575.00

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

**ARBITRATOR**

R. Peter Olin

- Non-Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

/s/

08/14/03

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R. Peter Olin

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Signature Date

Non-Public Arbitrator, Presiding Chair

08/14/03

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

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00

Total Fees	= \$6,200.00
Less payments	= \$4,575.00

Balance Due NASD Dispute Resolution	= \$1,625.00
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Respondent is solely liable for:

Forum Fees	= \$1,575.00
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Total Fees	= \$1,575.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution	= \$1,575.00
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All balances are payable to NASD Dispute Resolution and are due immediately upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

R. Peter Olin

Non-Public Arbitrator, Presiding Chair

**Arbitrator's Signature**



R. Peter Olin  
Non-Public Arbitrator, Presiding Chair

8/14/03  
Signature Date

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