

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Deepen A. Modi

And

03-01240  
Chicago, Illinois

Name of Respondents

Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

Deepen A. Modi ("**Claimant**") was represented by Frederick J. Otto, Esq., Otto & Associates, Park Ridge, Illinois.

Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated ("**Respondent**") was represented by Thomas J. Kavalier, Esq. and Tammy L. Roy, Esq., Cahill Gordon & Reindel, LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 20, 2003. Counter Respondent Deepen A. Modi's Answer to Counterclaim was filed on or about June 19, 2003. Motion to Strike, Motion to Hold Prudential in Contempt and/or Motion for Summary Judgment was filed on or about May 18, 2005. Modi's Motion to Strike Cross Motion for Summary Judgment and Deepen A. Modi's Reply to Prudential Securities Incorporated Response to Claimant's Motions and Prudential's Cross Motion for Summary Judgment was filed on or about June 1, 2005. Submission Agreement of Claimant Deepen A. Modi was signed on February 12, 2003.

Statement of Answer and Counterclaim was filed by Respondent Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated on or about May 27, 2003. Respondents' Response to Claimant's Motion to Strike Respondent's Pleadings, Motion for Contempt of a Panel's Order and/or For Summary Judgment and Respondent's Cross Motion for Summary Judgment were filed on or about May 26, 2005. Respondent's Reply in Further Support of its Cross Motion for Summary Judgment was filed on or about June 6, 2005. Submission Agreement of Respondent Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated was signed on May 20, 2003 by Susan A. Moldovan.

### **CASE SUMMARY**

Claimant asserted, among other claims, the following: breach of contract; breach of obligation of fair dealing; breach of fiduciary duty; and violation of New York and Florida labor laws. Claimant alleged that he was terminated for cause as a result of a "*deminimus* rule violation." Claimant asserted that after his termination, Respondent wrongfully retained contributions made by and on behalf of Claimant into deferred compensation programs. Claimant asserted that the retention of the deferred compensation contributions was inappropriate under the circumstances and was in violation of various laws.

Respondent denied the allegations set forth in the Statement of Claim.

In the purported counterclaim, Prudential asserted a claim for indemnity under the terms of the MasterShare Plan, alleging that Claimant breached the representations and warranties under the Plan and is therefore should be responsible for the attorneys' fees incurred in this matter.

### **RELIEF REQUESTED**

Claimant requested that an award be made in his favor, and against Respondent as follows:

1. Claimant, Mr. Modi, shall be awarded \$633,059 in damages;
2. Claimant be awarded additional compensation of his attorney fees, expert witness fees and the cost of these proceedings; and
3. Such other and further relief as is appropriate under the circumstances.

Respondent requested that the Panel:

1. Dismiss the Statement of Claim in its entirety;
2. Grant Prudential's counterclaim and award it the costs and expense of this arbitration including, but not limited to, its attorneys' fees; and
3. Award Prudential such other and further relief as is just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

By letter dated April 22, 2004, the parties were advised that Respondent's Request for Summary Judgment was denied.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter are hereby denied in their entirety.
2. Any counterclaims asserted in this matter are denied in their entirety.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s) May 4-6, 2004, adjournment requested by Claimant. Fee waived by the Arbitration Panel = \$1,200.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

2	Pre-hearing session(s) with Panel	x	1,200.00	\$	2,400.00
	November 3, 2003	1	session		
	June 1, 2005				
3	Hearing sessions	x	1,200.00	\$	3,600.00
	August 23, 2005	1	session		
	August 24, 2005	2	sessions		
	Total Forum Fees			\$	6,000.00

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Deepen A. Modi.

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated.

### **Fee Summary**

Claimant, Deepen A. Modi, is liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	3,000.00
Total Fees	= \$	3,375.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	1,800.00

Respondent, Prudential Equity Group, LLC f/k/a Prudential Securities Incorporated, is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	3,000.00
Total Fees	= \$	10,000.00
<u>Less payments</u>	= \$	-7,250.00

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Balance Due NASD Dispute Resolution = \$ 2,730.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Mark F. Duffy, Esq. - Non-Public Arbitrator, Presiding Chair

Robert W. Edler, Esq. - Public Arbitrator

Donald Whiteman - Non-Public Arbitrator

Concurring Arbitrators:

Mark F. Duffy, Esq.

Non-Public Arbitrator, Presiding Chair

Signature Date

Robert W. Edler, Esq.

Public Arbitrator

Signature Date

Donald Whiteman

Non-Public Arbitrator

Signature Date

10/31/05  
Date of Service (For NASD office use only)

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Balance Due NASD Dispute Resolution = \$ 2,750.00


All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Mark F. Duffy, Esq. - Non-Public Arbitrator, Presiding Chair  
Robert W. Edler, Esq. - Public Arbitrator  
Donald Whiteman - Non-Public Arbitrator

Concurring Arbitrators:

Mark F. Duffy, Esq.  
Non-Public Arbitrator, Presiding Chair

  
Robert W. Edler, Esq.  
Public Arbitrator

Donald Whiteman  
Non-Public Arbitrator

Signature Date

  
Signature Date

Signature Date

Date of Service (For NASD office use only)

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Balance Due NASD Dispute Resolution = \$ 2,750.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Mark F. Duffy, Esq. - Non-Public Arbitrator, Presiding Chair  
Robert W. Edler, Esq. - Public Arbitrator  
Donald Whiteman - Non-Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Mark F. Duffy, Esq.  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Robert W. Edler, Esq.  
Public Arbitrator

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

  
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Donald Whiteman  
Non-Public Arbitrator

10-31-05  
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Signature Date

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Date of Service (For NASD office use only)

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