

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

INDUSTRY

In the Matter of Arbitration Between

Name of Claimant

Prudential Securities Inc.

vs.

Case #: 92-01501

Name of Respondent

Frank L. Fackovec

REPRESENTATION

For Claimant: Allen Meyer, Esq. of Katten Muchin & Zavis, New York, New York.

For Respondent: Lawrence Mandelker, Esq. of Kantor Davidoff, Wolfe, Rabbino & Kas. New York, New York.

CASE INFORMATION

Statement of Claim filed: April 30, 1992.

Claimant's Submission Agreement was signed on: April 29, 1992.

Claimant's Reply to Respondent's Counterclaims filed: September 25, 1992.

Statement of Answer and Counterclaims filed by Respondent, Frank Fackovec on: July 8, 1992.

Respondent, Frank Fackovec's Submission Agreement signed on: July 3, 1993.

HEARING INFORMATION

Hearing Date(s)/Sessions: May 25, 1993 - 1 session (Pre-hearing Conference)

May 26, 1993	-	1 session (Pre-hearing Conference)
June 16, 1993	-	2 sessions
June 18, 1993	-	2 sessions
June 24, 1993	-	2 sessions
November 8, 1993	-	2 sessions
November 9, 1993	-	2 sessions

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that on November 20, 1990 Claimant and Respondent voluntarily entered into an employment agreement and when Respondent became employed by Claimant he was loaned the sum of \$131,624.20 and signed a promissory note concurrently with executing his Employment Agreement. Claimant alleged that by terms of the note, Respondent is obligated to repay \$131,624.20 plus interest at 10% per annum in three equal annual installments of \$43,974.73 plus interest accrued on the 20th day of November 1991, 1992, 1993. Claimant contended that the loan would become due immediately and payable upon the termination for whatever reason of Respondent Fackovec's employment with Claimant. Claimant alleged that on October 4, 1991, Respondent resigned from Claimant's employ, whereby, under the terms of the employment the balance of \$131,624.20 became due and owing. Claimant further alleged that under the terms of the agreement Claimant was obligated to pay Respondent transitional compensation in the amount of \$131,624.20 to be paid in three equal annual installments of \$43,874.73 plus 10% interest on the 20th day of November 1991, 1992, and 1993 and if Respondent resigns or is terminated for cause prior to completing 3 years of employment, Claimant is not obligated to make any payments. Claimant further alleged that on April 10, 1991, Respondent purchased for a customer account 3,000 Ann Taylor Warrants which were not blue skied in the state in which the client resided, whereby Claimant was forced to move the warrants and sell them at a loss of \$21,975.00. Claimant further alleged that it issued a demand to Respondent to honor his obligation under the note, and Respondent has failed and refused to honor his obligation.

Respondent maintained Claimant offered him a 30% advanced bonus based upon his last years production and a 50% payout in order to induce him to join Claimant's employ. Respondent further maintained that Claimant promised and represented it would supply Respondent with substantial syndicate products to service and expand his client base and agreed that Respondent would have an "institution squawk box" to participate in order flow or stock being offered by the firm and its clients. Respondent maintained that on November 1, 1993, after the arrangements were agreed upon but hours before joining Claimant, the Regional Manager, Eddie

Kahn, unilaterally reduced the agreed upon advance bonus from 30% to 20%, a difference of approximately \$65,812.00, whereby as a result of the meeting additional promises were made by letter such a cold caller, title of Vice President Investments, future sufficient leads and a Sales Assistant to be shared with other brokers. Respondent maintained Claimant reneged on its written agreement to contribute toward "the cold caller." Respondent was not awarded title of Vice President for 8 months, no leads were provided, and Respondent was not provided a full time sales assistant. Respondent further maintained that he was never provided with an "institutional box" but 3 months after joining Claimant he was provided with "a retail box." Respondent alleged that the order error claim loss was only \$10,500.00 and not \$21,975.00 and Claimant stated that brokers who purchased Ann Taylor notes will not be responsible for any losses. Respondent asserted affirmative defenses of promissory estoppel, constructive discharge, justifiable reliance and failure to follow compliance procedures. Respondent asserted a counterclaim for commissions due, breach of employment contract and fraud in the inducement.

RELIEF REQUESTED

Claimant requested: \$131,624.20 plus 10% interest from November, 1990, \$21,875.00 plus costs of collection, attorneys fees.

Respondent requested dismissal Claimant's claim, \$85,727.00, plus \$123,750.00 punitive charges of \$247,500.00 plus Awards of costs expenses and attorneys fees.

AWARD

1. Respondent Frank Fackovec be and hereby is liable and shall pay Claimant Prudential the sum of \$139,819.77 inclusive of interest.
2. All other claims be and hereby are dismissed in their entirety.
3. Each party shall bear their own costs including attorneys fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

10 sessions + 2 sessions (pre-hearing conference) = 10 x \$750.00 + 2 x \$300.00 = \$8,100.00 less \$750.00 hearing session deposit = \$7,350.00 net due.

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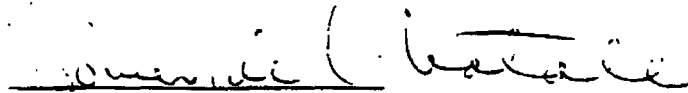
Respondent Fackovec be and hereby is liable and shall pay the NASD the sum of \$4,050.00 to represent forum fees.

Respondent Prudential be and hereby is liable and shall pay the NASD the sum of \$3,300.00 to represent forum fees.

The NASD shall retain the \$500.00 filing fee and \$750.00 hearing session deposit previously paid by Claimant and the \$500.00 filing fee previously paid by Respondent.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL



Domenick L. Natale, Esq.
Industry Arbitrator

Leon Goldsholl
Industry Arbitrator

Milton P. Aeder
Industry Arbitrator

Decision Dated: December 20, 1993

STATE OF

COUNTY OF:

On this day of 1993, before me personally appeared Milton P. Aeder known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

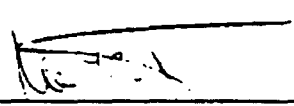
STATE OF:

SS:

COUNTY OF:

On this day of 1993, before me personally appeared Domenick L. Natale, Esq. know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

MARK O. GLUT
Notary Public, State of New York
No. 4886193
Qualified in Queens County
Commission Expires April 20, 1994



STATE OF:

SS:

COUNTY OF:

On this day of 1993, before me personally appeared Leon Goldsholl known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Respondent Fackovec be and hereby is liable and shall pay the NASD the sum of \$4,050.00 to represent forum fees.


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Domenick L. Natale, Esq.
Industry Arbitrator



Leon Goldsholl
Industry Arbitrator

Milton P. Aeder
Industry Arbitrator

Decision Dated: December 20, 1993

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SS:

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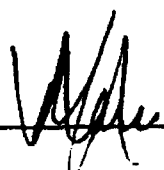
STATE OF:

NY

COUNTY OF:

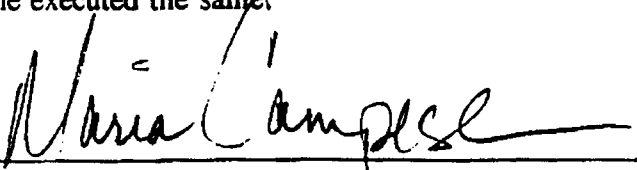
NY

SS:



MARIA A. CAMPESE
Notary Public, State of New York
No. 52-4965360
Qualified in Suffolk County
Commission Expires April 16, 1994

On this ^{7th} day of December, 1993, before me personally appeared Leon Goldsholl known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARIA A. CAMPESE
Notary Public, State of New York
No. 52-4965360
Qualified in Suffolk County
Commission Expires April 16, 1994

Respondent Fackovec be and hereby is liable and shall pay the NASD the sum of \$4,050.00 to represent forum fees.

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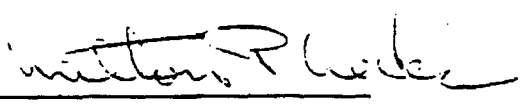
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Domenick L. Natale, Esq.
Industry Arbitrator

Leon Goldsholl
Industry Arbitrator



Milton P. Aeder
Industry Arbitrator

Decision Dated: December 20, 1993