

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

and

92-02543

Name of Respondent

John Edward Norman

REPRESENTATION OF PARTIES

Prudential Securities, Inc. ("Claimant") was represented by Gilbert W. Boyce, Esq. of Kutak Rock, Washington, D.C.

John Edward Norman ("Respondent") was represented by Raymond J. Turner, Esq. of Sherman & Howard, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about July 31, 1992. Reply to Counterclaim was filed on or about October 13, 1992. Submission Agreement of Claimant was signed on July 23, 1992 by John A. DeBellis.

Statement of Answer and Counterclaim was filed by Respondent on or about October 1, 1992. Second Counterclaim was filed on or about November 9, 1993. Submission Agreement of Respondent John Edward Norman was signed on September 28, 1992.

HEARING INFORMATION

A pre-hearing conference was held on Thursday, February 18, 1993 for one (1) session presided over by Gerald W. Wischmeyer, Esq.

The hearing was held on Tuesday, December 7, 1993 for two (2) sessions, Wednesday, December 8, 1993 for two (2) sessions and Thursday, December 9, 1993 for two (2) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that it had made certain loans to the Respondent which were evidenced by promissory notes and that the Respondent has failed to repay those notes pursuant to their terms. The agreement between the parties specified that the notes would become due and payable upon the termination of the Respondent.

Respondent stated that the notes in question were part of a scheme by Claimant known as the Executive Award Plan. It was alleged that the plan was imposed upon the Respondent in violation of the implied contract to pay full cash bonuses to the Respondent for the previous year's production. In addition, Respondent stated that he had not received the annual installments on his bonus which was to be used to repay the notes. Respondent further alleged that if the notes were extensions of credit, Claimant violated §7(c) of the Securities Exchange Act of 1934 and are void under the act.

In response to the Counterclaim, Claimant stated that the bonus system during the years that the Respondent was employed at Prudential Securities, Inc. or its predecessor firms was discretionary in amount and form. Claimant also stated that Respondent had resigned long before bonuses had been declared or paid for calendar year 1991.

RELIEF REQUESTED

Claimant requested an award in the amount of \$44,995.08, interest on the first Note at the contract rate of 9% from February 28, 1990 until the date of payment, interest on the second Note at the contract rate of 8.5% from February 28, 1991 until the date of payment, costs of collection, and such other relief as the Arbitration panel deems just and proper. Claimant further requested that the claims asserted in the Counterclaim be dismissed.

Respondent requested that the Arbitration Panel enter an order dismissing the claims asserted in the Statement of Claim and awards him the reasonable value of bonus compensation for the revenues generated by him during the first five and one-half months of 1991. In the Second Counterclaim, Respondent requested an award of the unpaid sum of \$12,000.00 in return for the tender of the stock certificate for 223.11 shares.

OTHER ISSUES CONSIDERED & DECIDED

Arbitrator David Quinn did not appear at the hearing on Wednesday, December 8, 1993 and Thursday, December 9, 1993 due to illness. The parties agreed to proceed with the hearing with the remaining arbitrators present and agreed to have Mr. Quinn listen to the tape recording of the hearing and participate in the deliberations.

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 N.A.S.D.

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 by Prudential Securities, Inc. shall be and hereby are denied in their entirety.
2. The claims asserted in this matter in the Counterclaim by John Edward Norman shall be and hereby are dismissed in their entirety.
3. Claimant Prudential Securities, Inc. shall be and hereby is liable for and shall pay to the Respondent John Edward Norman the sum of *twelve thousand dollars* (\$12,000.00).
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §44(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. by the Claimant and shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. by the Respondent. Claimant shall pay to the N.A.S.D. the sum of \$1,350.00 and Respondent shall pay to the N.A.S.D. the sum of \$1,350.00 as additional forum fees.

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each prehearing conference, if any.

The N.A.S.D. shall retain postponement fees in the amount of \$300.00 previously deposited with the N.A.S.D. by the Claimant and Respondent shall pay to the N.A.S.D. the sum of \$300.00. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Gerald W. Wischmeyer, Esq.
Gerald W. Wischmeyer, Esq.
Industry Arbitrator, Presiding Chair

December 21, 1993

s/ Rozanne L. Nelson
Rozanne L. Nelson
Industry Arbitrator

December 24, 1993

s/ David P. Quinn
David P. Quinn
Industry Arbitrator

December 22, 1993