

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

vs.

Case No.  
92-02594

Name of Respondent

Arthur Jutte

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**REPRESENTATION**

For Claimant, Prudential Securities, Inc., ("Claimant"), Gilbert W. Boyce, Esq. from the law firm of Kutak Rock located in Washington, D.C.

For Respondent, Arthur Jutte, ("Respondent"), Robert M. Buschmann, Esq. from the law firm of Gage & Buschmann located in New York City, New York.

**CASE INFORMATION**

Statement of Claim filed on August 3, 1992.

Claimant's Submission Agreement signed on July 29, 1992.

Statement of Answer filed by Respondent Arthur Jutte on October 8, 1992.

Respondent Arthur Jutte's Submission Agreement signed on October 9, 1992.

**HEARING INFORMATION**

Pre-Hearing Conference:	March 29, 1993	-	1 session
Hearing Dates/Sessions:	November 29, 1993	-	2 sessions
	November 30, 1993	-	2 sessions
	December 22, 1993	-	2 sessions
	December 28, 1993	-	2 sessions
	April 12, 1994	-	2 sessions
	April 13, 1994	-	2 sessions
	June 6, 1994	-	2 sessions
	July 11, 1994	-	2 sessions
	August 30, 1994	-	1 session

Hearing Location: The NASD offices located in New York City, NY.

**CASE SUMMARY**

Claimant alleges that it extended to Respondent a loan in the amount of \$133,000.00 and that Respondent was to sign a promissory note and return it to Claimant. Claimant alleges that Respondent failed to do so but cashed the loan check for that amount. Claimant also alleges that under the terms of the note, Respondent is required to repay the full amount of the loan upon termination of his employment with Claimant. Claimant further alleges that Respondent voluntarily resigned on June 11, 1990 and the full amount of \$133,000.00 plus accrued interest became due. Claimant alleges that it sent two letters demanding payment and Respondent, however, refuses to pay the amount owed.

Respondent maintains that when he joined Claimant's firm in October, 1987, the compensation package he discussed indicated that payment would be made in the form of cash and that loan, stock or other forms of deferred compensation were not discussed.

Respondent alleges that after being ranked first in fixed rate AA underwriting in 1989, his bonus for that year, \$133,000.00 was paid in early March, 1990 by check. Respondent contends that this money was not described as a repayable loan and that two managing directors of the firm told him that Claimant would not seek repayment if he left the firm but that he would forfeit his stock award. Respondent also contends that the notes was explained as an "accounting fiction" to circumvent restrictions placed by Claimant's parent company and he was not required to sign the note.

Respondent states that notwithstanding the above, he is entitled to an offset pursuant to funds due him under Claimant's "Executive Award Plan", as well as \$8,888.00 under the terms of Prudential-Bache Incentive Share Plan.

Respondent also states that due to the change in management in his department and a drastic reduction of his duties without assurances as to his continued employment with Claimant he disclosed that it would be difficult to decide to remain with the firm. Respondent further states that Claimant announced his resignation although he had not resigned.

Claimant denies liability to Respondent and denies that Respondent is entitled to damages.

**RELIEF REQUESTED**

Claimant requests an award for the sum of \$140,980.00 plus interest of at a rate of nine percent (9%) from February 28, 1990 until the date of payment as well as the cost of this proceeding, a dismissal of the Counterclaim and such other relief as the panel deems just and proper.

Respondent requests an award in the amount of \$8,888.00 under the Prudential-Bache Incentive Share Plan, \$150,000.00 in compensation for work performed during early 1990, and a determination that any real or perceived debt be offset against Claimant's debt to him under the terms of the Executive Award Plan. Respondent also requests that an award of severance benefits that are customary and fair and in accordance with Claimant's own policies, costs associated with the proceeding and any other remedies which are appropriate and warranted under the circumstances.

### **AWARD**

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

1. All claims of the Claimant are denied.
2. All claims of the Respondent are denied.
3. All claims for attorneys' fees claims are denied.
4. All claims for costs are denied.

### **FORUM FEES**

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

Non-refundable Claim Filing Fee - \$500.00  
Non-refundable Counterclaim Filing Fee - \$500.00  
Hearing Session Fees - \$12,750.00 (17 sessions x \$750.00 per session)  
Pre-Hearing Conference Fee - \$300.00  
Total Fees = \$14,050.00

1. Claimant previously paid \$1,250.00 and owes a balance of \$5,775.00.
2. Respondent previously paid \$1,250.00 and owes a balance of \$5,775.00.
3. Claimant requested and obtained two postponements of the hearings that were scheduled for June 30, 1993 and August 4, 1993. The panel assessed a \$750.00 fee for each postponement. Claimant paid a total of \$1,200.00 and owes a balance of \$300.00.

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

**ARBITRATION PANEL**

Stuart N. Kingoff, Esq.	-	Industry Chairperson
Andrew Reegen	-	Industry Panelist
Paul E. Barr	-	Industry Panelist

~~Dissent~~  
~~Concurring~~ Arbitrator's Signature

  
Stuart N. Kingoff, Esq.

Date of Decision: October 24, 1994

STATE OF *NEW YORK*  
COUNTY OF *NASSAU*

s.s.:

On this *18<sup>th</sup>* day of October, 1994 before me personally appeared Stuart N. Kingoff 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.



JAY MARC ISRAEL  
Notary Public, State of New York  
No. 5006909  
Qualified in Nassau County  
Commission Expires January 15, 1995

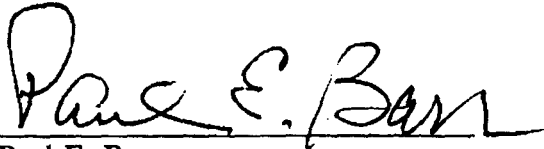
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NASD Arbitration No.: 92-02594

**ARBITRATION PANEL**

Stuart N. Kingoff, Esq.	-	Industry Chairperson
Andrew Reegen	-	Industry Panelist
Paul E. Barr	-	Industry Panelist

Concurring Arbitrator's Signature



Paul E. Barr

Date of Decision: October 24, 1994

STATE OF  
COUNTY OF

S.S.:

On this 18 day of October, 1994 before me personally appeared Paul E. Barr 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.



**ALAN M. PERLBERG**  
A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Feb. 15, 1995

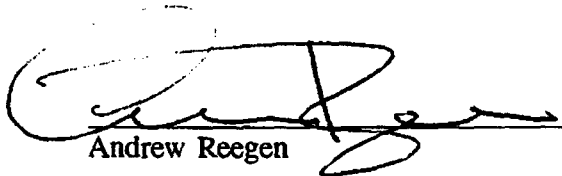
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NASD Arbitration No.: 92-02594

**ARBITRATION PANEL**

Stuart N. Kingoff, Esq.	-	Industry Chairperson
Andrew Reegen	-	Industry Panelist
Paul E. Barr	-	Industry Panelist

Concurring Arbitrator's Signature

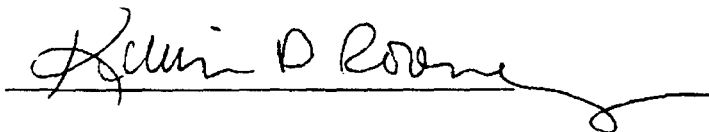
  
Andrew Reegen

Date of Decision: October 24, 1994

STATE OF  
COUNTY OF

S.S.:

On this 18 day of October, 1994 before me personally appeared Andrew Reegen 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.



KERRIN D. ROONEY  
Notary Public, State of New York  
No. 52-4894296  
Qualified in Suffolk County  
Term Expires May 11, 1995