

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

93-00209

Name of Respondent

John D. Porter, III

REPRESENTATION

For Claimant, Prudential Securities, Inc. ("Claimant"), Gilbert W. Boyce, Esq. of Kutack Rock located in Washington, D.C.

For Respondent, John D. Porter, III, ("Respondent") Robert M. Buschmann, Esq., of Gage Finneran & Buschmann located in New York, NY.

CASE INFORMATION

Statement of Claim was filed by Claimant on January 19, 1993.
Claimant's Submission Agreement was signed on November 25, 1992.

Statement of Answer filed by Respondent on June 4, 1993.
Respondent's Submission Agreement signed on June 4, 1993.

HEARING INFORMATION

Hearing Date/Sessions: May 10, 1994 / 2 Sessions.
 May 11, 1994 / 2 Sessions.

Hearing Locations: Offices of the National Association of Securities
 Dealers, Inc. offices located in New York, New
 York.

CASE SUMMARY

Claimant alleged that it made three separate loans to Respondent, each of which Respondent, either in full or in part, failed to repay. Claimant alleged that it loaned Respondent the first sum of \$180,000 on January 21, 1989, and that Respondent signed a promissory note requiring Respondent to repay this sum, plus 10.25% interest per annum, by January 21, 1989 or upon termination of Respondent's employ with Claimant. Claimant further alleged that Respondent made no payments on this loan.

Claimant alleged that it loaned Respondent a second sum of \$13,020.00 in February of 1990. Claimants further alleged that by the terms of a second promissory note which Claimant allegedly gave to Respondent but which Respondent never signed, Respondent is obligated to repay this sum plus interest at 9% per annum in three equal installments of \$4,340.00 on the last day of February 1991, 1992, 1993, or upon termination of his employment with Claimant. Claimant further alleged that despite an inscription on the loan check which read "Accepted pursuant to terms on Note dated February 28, 1990," that Respondent made only two of the three payments.

Claimant also alleged that it loaned Respondent a third sum of \$27,500.00 in February of 1991 and that Respondent signed a third promissory note and subsequently cashed the check. Claimant further alleged that Respondent's obligation to repay the loan was further documented by a legend on the back of the check which read, "Accepted pursuant to terms of a 02 28 1991 Note." Claimant further alleged that under the promissory note, Respondent was obligated to repay this sum plus interest at 8.5% per annum in three equal installments of \$9,166.67 each. Claimant further alleged that Respondent made only one payment of \$9,166.67.

Claimant further alleged that on or about May 8, 1992 Respondent voluntarily resigned from Claimant.

Respondent maintained that under a compensation package negotiated with Mr. Gerald P. McBride ("McBride"), Senior Vice President and Manager of the Tax Exempt Division of Claimant, Respondent was to receive a salary of \$125,000 and a bonus of not less than \$325,000 for 1988 and a salary of \$125,000 and a bonus of not less than \$250,000 for 1989.

Respondent maintained that he asked for and received from Claimant a loan of \$180,000 and that Respondent signed a promissory note for the loan dated January 21, 1988. Respondent further maintained that he made two years of interest payments on the loan from 1988 to 1989. Respondent also maintained

that in 1990 Respondent's income was reduced dramatically and that in response to the reduction, Respondent approached Mr. John Glidden ("Glidden") about setting up an amortization schedule for the \$180,000 loan. Respondent asserted that in response to Glidden's request, Respondent prepared a memorandum dated May 14, 1991 for McBride outlining the amortization schedule. Respondent maintained that after delivering the memorandum to McBride he received assurances on several occasions from Glidden that Respondent need not worry about the loan. Respondent further maintained that in reliance upon the agreement to amortize the loan over a 3 year period, he remained with Claimant, and the first two installments, one of \$90,000 and one of \$45,000, would have been discharged under the amortization schedule. Respondent also maintained that at no time, for almost one year following receipt of the amortization schedule by McBride, did Claimant inform Respondent that Claimant had not agreed to the loan amortization schedule.

Respondent maintained that it was not until early 1992 that he learned that Claimant did not intend to honor the loan amortization agreement. Respondent further maintained that upon receiving a memorandum indicating that Respondent still owed the full \$180,000, he met with McBride who asked Respondent to make a payment of outstanding interest on the loan for 1991 which totalled \$20,370.77 as a gesture of good faith. Respondent maintained he made the payment in the belief that the payment would confirm Respondent's intention to remain with Claimant and in the expectation that the loan would be amortized according to the amortization schedule submitted a year earlier.

Respondent maintained that on May 6, 1992 Respondent was informed by McBride that Claimant had no intention of honoring its agreement to amortize the loan, despite McBride's understanding that Glidden had assured Respondent that the loan had been taken care of. Respondent further maintained that McBride told Respondent that he should not have made the good faith interest payment if he believed that the loan had been discharged.

Respondent maintained that his decision to leave Claimant's employ was based upon McBride's refusal to honor the loan amortization agreement.

Respondent maintained that his guaranteed compensation for 1989 was \$125,000 salary plus \$250,000 as a bonus but that he actually received \$125,000 salary plus a bonus of \$238,545 which was \$11,455.00 less than the amount guaranteed by Claimant. Respondent further alleged that in February 1990 Respondent received from Claimant a draft promissory note as well as a separate letter announcing Respondent had been awarded the sum of \$13,020.00 under the "1990 Executive Award Plan." Respondent maintained that he did not sign the note, and did not

agree to sign the note since Respondent believed that the \$13,020 represented money owed to Respondent as part of his guaranteed bonus for 1989. Respondent further maintained that he is responsible for repaying only \$1,565, the amount by which the \$13,020 bonus exceeded the unpaid portion of Respondent's guaranteed bonus of \$11,455.

Respondent maintained that in February 1991 he received a draft promissory note for \$27,500 as well as an award under the 1991 Executive Award Plan of \$27,500. Respondent then maintained that he signed the note and accepted the loan for \$27,500 and that Respondent intends to repay that amount.

Finally, Respondent maintained that he intends to repay the full amounts of principal and interest owed to Claimant and that those amounts are the unamortized portion of the 1989 unsigned loan of \$1,565, the unamortized portion of the \$27,500 loan and the remaining portion of the \$180,000 loan that would have been discharged on December 31, 1992 had he remained with Claimant.

RELIEF REQUESTED

Claimant requested that Claimant be granted an arbitration award against Respondent for the following:

- 1) The sum of \$218,950.77 - the combined outstanding balances on the \$13,020.00, \$27,500.00, and \$180,000.00 loans;
- 2) Interest on the First Note at the contract rate of 10.25% from January 21, 1988 until the date of payment;
- 3) Interest on the Second Note at the contract rate of 9% from February 28, 1990 until the date of payment;
- 4) Interest on the Third Note at the contract rate of 8% from February 28, 1991 until the date of payment;
- 5) The cost of collection, and of the arbitration proceeding, as Claimant alleges Porter agreed to pay under the terms of the First Note, Second Note, and Third Note; and
- 6) Such other relief as the arbitration panel deems just and proper.

Respondent requested that all claims for sums for which he is not liable be dismissed and that Claimant should be required to return to Respondent the remaining personal belongings from his office, his 401(k) funds, payments due him under the Bonus Plan A, and any other funds and stock to which he is entitled.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with 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:

Respondent is liable and shall pay to claimant the sum of \$245,204.00 which is inclusive of all principal and interest. The sum of \$245,204.00 is broken down as follows:

\$180,000.00	<u>1988 Personal Loan</u>
+ \$106,088.00	(interest)
- \$ 56,371.00	(payments)
+ \$ 521.00	<u>1990 Executive Award</u>
+ \$ 172.00	(interest)
+ \$ 18,333.00	<u>1991 Executive Award</u>
+ \$ 4,155.00	(interest)
+ \$ 12,306.00	Attorney's Fees
- \$ 20,000.00	Plan A

= \$245,204.00

FORUM FEES

Pursuant to Section 44 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

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The NASD shall retain the nonrefundable filing fee of \$500 paid.

2 sessions X \$750 = \$1,500.00.

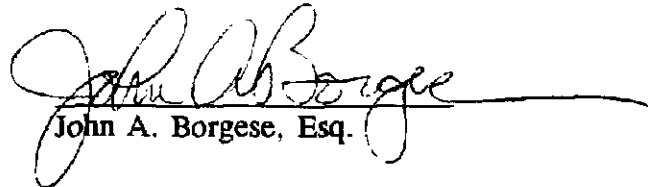
1. Claimant is assessed \$750 which represents one-half of the balance of the forum fees assessed, less \$750 hearing session deposit paid leaving a balance due of 0.
2. Respondent is assessed \$750 which represents one-half of the balance of the forum fees assessed. Respondent be and hereby is liable and shall pay to the NASD the sum of \$750.

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

Concurring Arbitrators' Signatures

Name

Industry Chairman


John A. Borgese, Esq.

8/16/94

Name

Industry Panelist

Lawrence Leibowitz, Esq.

Name

Industry Panelist

James H. Conley

Date of Decision: August 23, 1994

STATE OF: *New Jersey*
COUNTY OF: *Hudson*

SS:

On this *16th* day of *August*, 1994, before me personally appeared **John A. Borgese, 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.

Julia Arnold

JULIA ARNOLD
Notary Public, State of New Jersey
No. 2100310
Qualified in Bergen County
Commission Expires May 13, 1997

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Lawrence Leibowitz, Esq.** 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **James H. Conley** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

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NASD Award #93-00209

Concurring Arbitrators' Signatures

Name

Industry Chairman

John A. Borgese, Esq.

Name

Industry Panelist

Lawrence Leibowitz, Esq.

8/15/94

Name

Industry Panelist

James H. Conley

Date of Decision: August 23, 1994

STATE OF:

SS:

COUNTY OF:

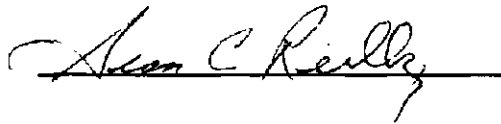
On this day of , 1994, before me personally appeared **John A. Borgese, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *15th* day of *August*, 1994, before me personally appeared **Lawrence Leibowitz, Esq.** 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.



SEAN C. REILLY
NOTARY PUBLIC, State of NY
No. 4880819
Qualified in Kings County
Certificate Filed in New York County
Commission Expires Jan. 21, 1996

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **James H. Conley** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Concurring Arbitrators' Signatures

Name

Industry Chairman

John A. Borgese, Esq.

Name

Industry Panelist

Lawrence Leibowitz, Esq.

Name

Industry Panelist

James H. Conley

Date of Decision: August 23, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **John A. Borgese, Esq.** 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Lawrence Leibowitz, Esq.** 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.

STATE OF: NY

SS:

COUNTY OF: NY

On this 22 day of August, 1994, before me personally appeared **James H. Conley** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996