

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

93-00947

Name of Respondent

Anthony E. Terrano

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 12, 1993, Claimant Prudential Securities, Inc., by and through their counsel David L. Becker, Esq. of Kutak Rock, New York, NY, alleged that on or about June 5, 1989, Respondent Anthony Terrano commenced his employment with Claimant and subsequently in February 1990, Claimant loaned Respondent the sum of \$10,000.00 whereby at the time Respondent received the loan, he was given a promissory note (the "1990 Note"). Claimant further alleged that although Respondent accepted and cashed the \$10,000.00 loan check, he never signed and returned the 1990 Note as he agreed to do. Claimant contended that by the terms of the 1990 Note, Respondent is obligated to repay \$10,000.00 plus interest at 9% per annum, without notice, protest, presentment or demand, in equal installments of \$3,333.00 each, on the last day of February 1991, 1992 and 1993 or upon termination, for any reason whatsoever, of his employment with Claimant. Claimant further contended that in order to further document the fact that the \$10,000.00 payment was a loan, Claimant typed the following legend on the reverse of the loan check cashed by Respondent: "Accepted pursuant to terms of a Note dated February 28, 1990". Claimant asserted that on or about September 20, 1990, seven months after receiving the \$10,000.00 loan, Respondent voluntarily resigned from Claimant, to become employed with Goldman Sachs, a competitor of Claimant. Claimant further asserted that the outstanding balance on the 1990 Note of \$10,000.00 plus accrued interest which Respondent has failed and refused to repay, became due and owing on or about September 20, 1990, the date of Respondent's voluntary resignation from Claimant. Claimant further alleged that to date, Respondent has failed to make repayment although duly demanded.

Respondent Anthony Terrano, who appeared Pro Se, maintained that the money whose return is sought by Claimant Prudential Securities, Inc., was a component of the regular compensation paid to him as an employee of Claimant and it was paid to him as part of his year end compensation. Respondent further maintained that the compensation consisted of a cash component and a "stock certificate" whereby the "stock" comprised an equity-like participation in Claimant, even though the firm is not publicly traded, which vested after three years of employment at Claimant, and the cash component consisted of a guaranteed payment, whose amount was agreed upon at the time he commenced employment with Claimant, and the payment which is in dispute. Respondent contended that prior to the payment of the year end compensation, his management described the sham "loan" to him as an accounting convenience for the firm and by presenting his compensation as a loan, it could be carried on the firm's books as an asset rather than being incurred as an expense. Respondent further contended that at no time was it characterized as a "golden-handcuffs" arrangement: that role was played by the "stock", and on the contrary, the "loan" strategy was presented as a method to fully compensate him for his work during the preceding year despite the fact that the firm had lost money that year and as a result, compensation pools were small. Respondent asserted that as evidence of the essentially fictitious nature of the "loan" is the fact that he was not asked to actually sign the Note and in a bona-fide loan transaction, execution of the Note would have been completed before the money exchanged hands; however, in light of the manner in which the transaction had been presented to him, Respondent was not surprised that he was not asked to sign anything and his understanding was that he was not expected to repay anything. Respondent further asserted that at no time did he, verbally or in writing, request a loan of any sort from Claimant, nor did he ever consent to the encumbrance of his compensation with any sort of Note or agreement to return a part of it to Claimant under any circumstances, thus the claim should be dismissed.

RELIEF REQUESTED

Claimant Prudential Securities, Inc. requested the sum of \$10,000.00 in actual damages together with interest at the contract rate of 9% per annum from February 28, 1990 and costs plus other relief.

Respondent Anthony Terrano requested the claim be dismissed in its entirety and he be awarded costs.

AWARD

Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Securities Arbitrator, Francis A. Sullivan, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 8, 1993 and by the Respondent on September 21, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Anthony Terrano is liable and shall pay to the Claimant Prudential Securities, Inc. the sum of \$6,666.00 in damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Prudential Securities, Inc. shall be retained by the NASD, Inc.

ARBITRATOR'S FINDING OF FACTS

CASE NUMBER 1-00947

Prudential Securities Incorporated vs. Anthony E. Terrano

It is common practice in the industry to use promissory notes as a form of bonus and employment retention device. This is done to give a tax deferral to the recipient and to the firm. It allows the firm to carry a loan on the books with demand provisions to ensure employee retention of valuable employees. Thus, it is to the advantage of the firm and the employee.

The check issued by the Claimant was such a loan, evidenced by the notation on the back of the check and by the fact that no taxes or other withholding were taken out the check for \$10,000.00 made out to the Respondent.

Respondent states that he did in fact know it to be a loan, albeit a "cham" loan (paragraph 1).

Respondent presents no supporting evidence that management withheld information or tried to deceive him concerning the check in question (paragraphs 104).

Respondent states that he was not asked to sign the note, which again evidences that he was aware of some kind of different payment, at least one with no taxes withheld and a legend on the back.

Respondent states that he signed the check in the "conventional manner." The legend above his signature was not conventional and he should have questioned it before signing it. This is expected of a professional in our industry which presumes good faith in financial dealings.

While the Respondent did not sign the note, there is evidence that he was aware of the existence of such note and states that he would have refused to sign the note if asked (paragraph 5). If he would not sign the note, why would he sign a check making reference to such note? Why would he cash a check with no withholding or taxes taken from it without an explanation?

It is the decision of this Arbitrator that based on the matters raised in the above, the Respondent is liable for a substantial portion of funds advanced by Claimant by the note in question.

NASD CASE NUMBER 93-00947

Prudential Securities Incorporated vs. Anthony E. Terrano

The Claimant was negligent in the explanation and execution of the compensation plan for the Respondent.

It is common practice in the industry to hand the check to the employee after the employee has read, fully understood and signed the note in the presence of a witness or notary.

It is also common practice to take care of the tax liabilities on the anniversary dates.

Claimant did not perform and caused exposure of the loss of funds in question.

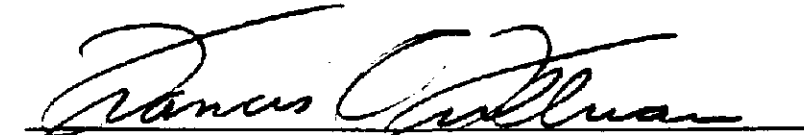
It is the opinion of this Arbitrator that the Claimant is entitled to partial recovery limited to the last two full years that the employee was not in the employ of the Claimant without interest costs or fees.

The Claimant is entitled to \$6,666.00 for the years of 1992-1993.

The Respondent will repay \$6,666.00 and assume his own costs or fees.

AFFIRMATION

I, FRANCIS A. SULLIVAN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

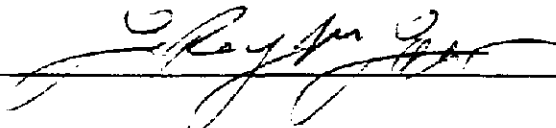
DATE OF DECISION: December 14, 1993

STATE OF: NEW YORK

SS:

COUNTY OF: WESTCHESTER

On this 9th day of DECEMBER 1993, before me personally appeared Francis A. Sullivan to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LEROY M. LAW
Notary Public, State of New York
No. 4713780
Qualified in Westchester County
Commission Expires 6-30-94