

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Prudential Securities Incorporated

93-01126

Name of Respondent

Robert J. Torkelson

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1993, Claimant Prudential Securities Incorporated by and through their counsel Helen K. Benkert of Siegan Barbakoff & Gomberg, Chicago, IL, alleged that on or about September 15, 1989, Claimant and the Respondent Robert J. Torkelson voluntarily entered into an employment agreement ("Employment Agreement") and a promissory note ("Note") at which time, concurrent with the execution of the Employment Agreement, the Respondent was loaned the sum of \$5,941.00 and by the terms of the Note, Respondent is obligated to repay \$5,941.00 plus interest at 10% per annum without notice, protest, presentation or demand in 3 equal annual installments of \$1,980.33 on September 15, 1990, 1991 and 1992. Claimant further alleged that the Note further provides that the loan would become immediately due and payable upon termination, without regard to reason, of Respondent's employment with Claimant. Claimant contended that due to the Respondent's resignation from Claimant on or about September 21, 1991, the balance of \$1,980.33 representing the unpaid portion of the Note immediately became due and owing together with interest at the rate of 10% has accrued from September 21, 1991. Claimant further contended that on or about December 16, 1992, Claimant tendered a demand to Respondent to honor the remaining obligation under the Note and to date, Respondent has failed and refuses to honor his obligation to Claimant. Claimant asserted that pursuant to the Note, Respondent agreed that in the event of default in any of the provisions of the Note, Respondent would pay all costs of collection, including reasonable attorney's fees, thus after applying all just credits and deductions, Respondent has failed to pay although duly demanded.

Respondent Robert J. Torkelson failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Prudential Securities Incorporated requested the sum of \$2,552.73 in actual damages together with interest at the contract rate of 10% per annum from March 5, 1993 and the cost of this proceeding plus attorney's fees of \$451.50 and any other relief deemed just.

Respondent Robert J. Torkelson failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 10 of the NASD Code of Arbitration Procedure, the Respondent Robert J. Torkelson was served a copy of the Statement of Claim by regular mail on March 24, 1993 and given an opportunity to respond, which he failed to do. Respondent Robert J. Torkelson was notified on May 20, 1993, via certified mail, of the identity of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD dated May 25, 1993, evidencing his receipt of this correspondence. Respondent Robert J. Torkelson failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Robert J. Torkelson was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Securities Arbitrator, David Evans Rosedahl, Esq., 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 18, 1993 and not signed by the Respondent as required by Sections 8 & 10 of the NASD Code of Arbitration Procedure.

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 Robert J. Torkelson is liable and shall pay to the Claimant Prudential Securities Incorporated the sum of \$1,980.33 in damages.
2. Respondent Robert J. Torkelson is liable and shall pay to the Claimant Prudential Securities Incorporated simple interest at the rate of 10% per annum from September 21, 1991 to the date of payment of the award.

3. Respondent Robert J. Torkelson is liable and shall pay to the Claimant Prudential Securities Incorporated the sum of \$451.50, representing attorney's fees.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Prudential Securities Incorporated shall be retained by the NASD, Inc. Respondent Robert J. Torkelson is liable and shall pay to the Claimant Prudential Securities Incorporated the sum of \$575.60, representing reimbursement of the NASD filing fee and costs.

AFFIRMATION

I, **DAVID EVANS ROSEDAHL, ESQ.**, 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.

David Evans Rosedahl

David Evans Rosedahl, Esq.

DATE OF DECISION: October 4, 1993