

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

93-01301

Name of Respondent

Raymond Minicucci

REPRESENTATION

For Claimant Prudential Securities, Inc. ("Claimant"): Richard A. Miller, Esq. of the law firm of Katten Muchin & Zavis located in New York City, New York.

For Respondent Raymond Minicucci ("Respondent"): Stephen B. Wexler, Esq. of Wexler & Burkhardt, P.C. located in Garden City, New York.

CASE INFORMATION

Statement of Claim filed: March 29, 1993.

Claimant's Submission Agreement signed on: March 31, 1993.

Statement of Answer filed by Respondent on: June 17, 1993.

Respondent's Submission Agreement signed on: June 16, 1993.

HEARING INFORMATION

| | | | |
|-------------------------|----------------|---|--------------|
| Hearing Dates/Sessions: | April 11, 1994 | - | Two Sessions |
| | April 12, 1994 | - | Two Sessions |

The hearing was conducted at the National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about June 22, 1990, Respondent voluntarily entered into an employment agreement with the Claimant. Claimant also alleged that

when Respondent became employed by Prudential Securities, Inc. he was loaned the sum of \$92,679.00 which is evidenced by a promissory note "(the Note)"; that Respondent voluntarily signed the Note concurrent with his execution of the Employment Agreement; and that by the terms of the Note, Respondent is obligated to repay \$92,679.00, plus interest at the rate of 10% per annum, in equal annual installments of \$30,893.00 on the 22 day of June 1991, 1992, and 1993.

Claimant further alleged that Respondent made only one payment under the terms of the Note. That the Note further provided that the loan would become immediately due and payable upon termination, for whatever reason, of Respondent's employment with Prudential Securities, Inc. Further, Claimant alleged that Respondent was terminated for cause on or about October 9, 1992; that the cause of Respondent's termination was Respondent's transmission of correspondence, without the approval of his branch manager; and that the balance of \$61,786.00, which represents the unpaid portion of the principal of the loan, became due and owing on October 9, 1992, the date of Respondent's termination.

Also, Claimant alleged that Respondent also agreed under the terms of the employment agreement, that all original records of individuals who maintained accounts at Prudential were the property of Prudential; that Respondent took original account documents and other client lists from Prudential at the time of Respondent's termination; and that Respondent has failed and refused to return these documents, despite Claimant's repeated demands.

Respondent denied all allegations of wrongdoing and maintained that on or about June 22, 1990, Respondent entered into a written employment agreement with Respondent and executed a promissory note in the amount of \$92,679.00, which was offset by an equal amount as transitional compensation to be paid in three yearly installments. Respondent further maintained that on or about October 9, 1992, Respondent was terminated, without cause and in breach of the employment agreement, from his position at Prudential Securities, Inc. Respondent maintained that Claimant's wrongful termination of Respondent, without just cause, precludes Claimant from recovering on any part of the promissory note inasmuch as it is fully offset by the transitional compensation due Respondent pursuant to the terms of the employment agreement.

Respondent maintained that he was allegedly terminated by Prudential Securities, Inc. for transmitting correspondence without approval of the branch manager; that prior to sending the correspondence, Respondent spoke to the Prudential Securities, Inc. legal department, and to his branch manager, as to the contents of the letter; and that the letter was on Prudential Securities, Inc.'s letterhead and was processed in the normal course of business. Respondent also maintained that he was dismissed by Respondent Prudential Securities, Inc. due to a personality conflict with his branch manager. Further, Respondent maintained that in early September, 1992, Respondent requested a transfer from the New York office to

the Long Island office but that the branch manager would not approve Respondent's transfer because the branch had already lost 6 other brokers within an eight month period causing a reduction of the revenues generated by the New York office, thereby reducing the branch manager's overall payment based upon office revenues. Respondent also maintained that if Respondent were dismissed, the branch office could attempt to keep Respondent's clients and still keep the revenues generated from those accounts.

Respondent further maintained that pursuant to the terms of the Employment Agreement between Claimant and Respondent, Respondent shall not be precluded from soliciting customers which Respondent individually and exclusively services while at Prudential Securities, Inc., nor shall Respondent be precluded from utilizing photocopies of respondent's customers' statements or copies of their financial advisor holding pages.

As and for its Counterclaim, Respondent alleged that his clients' mutual fund accounts and insurance policies were wrongfully held up by Claimant in an effort to retain Respondent's clients and the future commissions to be earned from them. Respondent further alleged that the conduct of Claimant in terminating Respondent, failing to transfer customer accounts, and withholding commissions due and owing Respondent constitutes a violation of NASD and NYSE Rules.

RELIEF REQUESTED

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

1. The sum of \$61,786.00 of unpaid principal of the note based on Respondent's default in repayment of the Note; and
2. Interest on the above-referenced sum, at the contract rate of 10% per annum from June 22, 1992, to the date of payment; and
3. An order directing Respondent to return the original account documents taken from the branch, and compensatory and consequential damages based on Respondent's taking of original account documentation; and
4. The cost of collection and costs of this proceeding, including reasonable attorneys' fees as Respondent agreed to pay under the terms of the Note; and
5. Any other relief as the arbitrators deem fit.

Respondent requested an award dismissing Claimant's claim against the

Respondent, and an arbitration award against Claimant on Respondent's counterclaims for the following:

1. The transfer of his clients' mutual fund accounts and insurance policies to his new employer; and
2. All commissions due him and commissions on the mutual fund accounts earned during his employment with Prudential Securities, Inc. and all trailing commissions until said accounts are released by Prudential Securities, Inc.; and
3. Payment of an additional 2% commission on his gross commissions earned in 1992 in accordance with Prudential Securities, Inc.'s 2% Financial Advisor profitability bonus which Respondent would have earned had it not been for his wrongful dismissal by Claimant; and
4. That his commission account be corrected and that he be paid the appropriate sums as follows:
 - A. On October 14, 1992 a purchase of 1 Zenith 6.25% bond in account #HPP-R04652 was canceled and then reinstated under another broker number; and
 - B. On October 27, 1992, two trades, which Respondent placed in account of his client, for (1) purchase of 22,750 shares of High Income ADV Fund; and (2) a sale of 12,825 shares of MFS Charter Fund were canceled by Respondent. Respondent requests \$135.11 on the sale and \$101.29 on the purchase; and
 - C. On October 30, 1992, Respondent's order for 10 REFCO Zero coupon bonds in Account #HPP-R04563 was canceled by Prudential Securities, Inc. without explanation; and
 - D. On October 29, 1992, Respondent's commissions were debited \$5,992.74 for an alleged order error in a customer's account relating to the cancellation of the purchase of High Income ADV Fund and sale of MFS Charter Fund on October 27, 1992 and Respondent requests damages for the loss side of the transaction that he was charged and not credited for the profit side of the transaction; and
5. That Claimant match Respondent's payment to his Prudential

Securities, Inc. 401K Plan for the year 1992 and make the required payment to Respondent's Prudential Securities, Inc. pension plan for 1992; and

6. That Claimant return Respondent's handcrafted wood and brass table clock that was awarded to him during the regional or national work night in 1992 and which Respondent was unable to recover from his office at Prudential Securities, Inc.; and
7. That Claimant return a large box of prospecting leads, customer statements and posting pages which belonged to him from his previous employment and which were left in Respondent's office at Prudential Securities, Inc. on October 9, 1992, and which he has been unable to recover from Prudential Securities, Inc.; and
8. Respondent requests that Prudential Securities, Inc. amend Respondent's U-5 Uniform Termination notice to delete any allegation that Respondent transmitted correspondence without the approval of the Branch Manager; and
9. That as a result of the wrongful conduct of Claimant Prudential Securities, Inc., Respondent requested an award of money damages of at least the sum being sought by Prudential Securities, Inc. on the promissory note and most likely in excess of that sum.

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:

1. Respondent Minicucci be and hereby is liable to the Claimant in the sum of \$61,786.00.
2. Respondent Minicucci be and hereby is liable to the Claimant in the sum of \$6,487.00, representing interest from June, 1993, pursuant to the terms of the promissory note.
3. Respondent Minicucci is hereby ordered by the panel to return the

original account documents taken from the branch.

4. All claims for compensatory and consequential damages based on Respondent's taking of original account documentation be and hereby are denied.
5. All other claims against Respondent be and hereby are dismissed with prejudice.
6. Claimant be and hereby is ordered by the panel to execute bulk transfer forms for all mutual funds under Respondent's registered representative number.
7. Claimant be and hereby is liable to the Respondent in the sum of \$1920.46, plus any other net commissions earned until the mutual funds are transferred.
8. Claimant be and hereby is ordered to return Respondent's *handcrafted wood table clock to the Respondent.*
9. Claimant be and hereby is ordered to return to Respondent prospecting leads, customer statements and posting pages which were left in Respondent's office at Prudential Securities, Inc. on October 9, 1992.
10. All other claims against Claimant be and hereby are dismissed with prejudice.
11. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the non-refundable filing fees and the hearing session deposits deposited by each party and the following Forum Fees are assessed.

4 sessions X \$750 = \$3,000 minus hearing session deposits of \$1350.00 = net \$1650.00.

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$825.00 representing one-half of the outstanding forum fees.
2. Respondent be and hereby is liable and shall pay to the NASD the

sum of \$825.00 representing one-half of the outstanding forum fees.

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

Concurring Arbitrators' Signatures

Name



Richard S. Peskin, Esq.

Chairperson - Industry Arbitrator

Thomas A. Turley
Industry Arbitrator

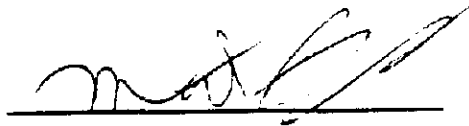
Irving Gindick
Industry Arbitrator


Date of Decision: May 23, 1994

STATE OF

COUNTY OF

On this 2 day of MAY, 1994, before me personally appeared Richard Gask
known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.



 Martin Fishman
Notary Public, State of New York
No. 1233960
Qualified in Nassau County
Commission Expires: August 31, 1995


sum of \$825.00 representing one-half of the outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Richard S. Peskin, Esq.
Chairperson - Industry Arbitrator

Thomas A. Turley
Industry Arbitrator


Irving Gindick
Industry Arbitrator

Date of Decision: May 23, 1994

STATE OF NEW YORK

COUNTY OF WESTCHESTER

On this 13 day of MAY, 1994, before me personally appeared
IRVING GINICK known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Marie Bellino

MARIE BELLINO
Notary Public, State of New York
No. 4963303
Qualified in Westchester County
Commission Expires March 12, _____


1996

sum of \$825.00 representing one-half of the outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Richard S. Peskin, Esq.
Chairperson - Industry Arbitrator



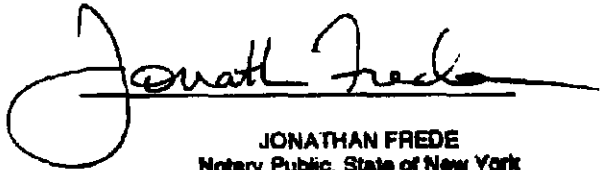
Thomas A. Turley
Industry Arbitrator

Irving Gindick
Industry Arbitrator

Date of Decision: May 23, 1994

STATE OF New York
COUNTY OF New York

On this 17th day of May, 1994, before me personally appeared
Thomas Turley known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.



JONATHAN FREDE
Notary Public, State of New York
No. 30-4743678
Qualified in Nassau County
Certificate filed in New York County
Commission Expires May 31, 1995