

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant
Prudential Securities, Inc.

NASD Arbitration
No. 93-01554

v.

Name of Respondent
Louis Rosalia

REPRESENTATION

For Claimant: Patricia A. Fitzpatrick, Esq., of Prudential Securities, Inc., New York, New York

For Respondent: John Huiskamp, Esq., of Duke, Gerstel, Shearer & Bregante, San Diego,
California

CASE INFORMATION

Statement of Claim filed: April 16, 1993

Claimant's Submission Agreement signed: April 2, 1993

Statement of Answer and Counterclaim filed: June 28, 1993

Respondent's Submission Agreement signed: June 14, 1993

Reply to Counterclaim filed: July 19, 1993

HEARING INFORMATION

Hearing Dates / Sessions: April 12, 1994 - 2 sessions
April 13, 1994 - 2 sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged Respondent voluntarily entered into an employment agreement with promissory note dated August 12, 1992, under the terms of which Respondent was to receive a loan of \$69,184, due in four equal annual installments of \$17,296 plus interest on the 31st day of July 1993, 1994, 1995 and 1996. The note was to be immediately due and payable upon Respondent's termination for any reason from Claimant's employ (as well as for other specified reasons). Claimant alleged Respondent's employment was terminated on February 1, 1993, causing Claimant to demand payment of the note in full with interest. Claimant also alleged that under the employment agreement, the transitional compensation of \$69,184 plus interest due from Claimant to Respondent in four equal annual installments of \$17,296 plus interest payable on the 31st day of July 1993, 1994, 1995 and 1996 is not due and payable under the terms of the employment agreement if, as here, Respondent's employment ends prior to completing four years of employment.

Respondent denied liability for any sums due under the promissory note. Respondent alleged the written employment agreement contradicted the prior agreements made with Claimant before Respondent left his previous employment and began employment with Claimant, but that he signed the written agreement because he had no viable alternatives by the time the written agreement was presented to him. Respondent alleged Claimant had agreed to provide support for him while he developed a foreign exchange trading business for Claimant. Respondent alleged the employment agreement and promissory note were induced by fraud or mistake.

Respondent asserted a Counterclaim for damages based on claims of fraud, wrongful termination, breach of contract and conversion.

Claimant responded to the Counterclaim by denying the allegations, and asserted Respondent's employment was terminated for lack of production. Claimant further asserted that all the terms of the agreement between the parties is set forth in the employment agreement and the promissory note.

RELIEF REQUESTED

Claimant requested damages of \$69,184 plus interest at 8% per annum from February 1, 1993 to date of payment, plus costs of collection, including attorney's fees as specified in the promissory note. Claimant also requested dismissal of the Counterclaim.

Respondent requested dismissal of the claimed damages under the promissory note and employment agreement. Respondent requested damages in the Counterclaim as follows: a declaration that the alleged employment agreement is invalid, or that it be reformed to conform to the promises made before Respondent transferred employment to Prudential; damages of \$10 million; an award of costs and expenses of arbitration including attorneys fees; an order that Prudential release all individual funds and accounts in the name of Respondent which Prudential

is withholding and an award of damages for conversion and the wrongful withholding of Respondent's individual funds and accounts, and an award of punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

At hearing, counsel for Respondent made a motion for judgment on the Counterclaim and a motion challenging the panel's jurisdiction to consider Respondent's claim for conversion and fraud. The panel denied both motions, and announced a finding of jurisdiction based on the employment agreement between the parties.

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:

With respect to Claimant's claims:

1. Respondent is liable for and shall pay to Claimant the sum of \$69,184 plus interest at the rate of 8% per annum from February 1, 1993 to April 13, 1994.
2. Respondent is liable for and shall pay to Claimant the sum of \$4,000 for attorney's fees, pursuant to the terms of the promissory note dated August 12, 1992.
3. The claim for expert witness expenses is denied.
4. Respondent is ordered to return to Prudential Securities the computer and peripheral equipment he took with him when he left Prudential's employ.
5. With respect to Respondent's Counterclaims, the claim requesting a declaration that the employment agreement between the parties is invalid is denied. The panel found that the employment agreement did conform to the promises made by Prudential and the intention expressed by the parties at the time Mr. Rosalia terminated his employment with Shearson. The employment agreement is held to be valid and enforceable.
6. The claims of Claimant for damages, costs of arbitration, attorney's fees and punitive damages are denied.

7. Prudential Securities, Inc. is ordered to release any and all individual funds held in accounts in Respondent's name.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fees paid by the parties. The \$600 hearing session deposit paid by Claimant is to be refunded, as is the \$1500 hearing session deposit paid by Respondent.

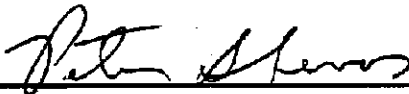
ARBITRATORS

Name

Peter Shenan
Jeanne C. Stilwell
Roger T. Verhage

Public / Industry
Industry Arbitrator
Industry Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures



Peter Shenan

Jeanne C. Stilwell

Roger T. Verhage

Served 5/17/94

Date of Decision: _____