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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities Inc

93-01741

Name of Respondent

Peter Bernard McCartney

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**REPRESENTATION**

For Claimant Prudential Securities, Inc.: Gilbert W. Boyce, Esq. of the law firm of Kutak Rock located in Washington, D.C.

For Respondent Peter Bernard McCartney : Brian J. Quinn, Esq. of the law firm of Birbrower, Montalbano, Condon & Frank P.C. located in New City, New York.

**CASE INFORMATION**

The Statement of Claim was filed on April 29, 1993 and Claimant's Submission Agreement signed on March 9, 1993.

The Statement of Answer was filed by Respondent Peter Bernard McCartney on July 7, 1993 and Respondent Peter Bernard McCartney's Submission Agreement signed on July 6, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: August 3, 1994 - One Session

Hearing Dates/Sessions: August 8, 1994 - Two Sessions

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

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### CASE SUMMARY

Claimant alleged that on or about October 18, 1982, Respondent commenced his employment with Prudential Securities, Inc.; that in or about February 1990, Prudential Securities, Inc. loaned the Respondent the sum of \$27,000.00; and that Respondent received and endorsed the \$27,000.00 loan check. Claimant also alleged that Respondent never signed and returned the First Note as he had agreed to and that to document that the \$27,000.00 payment was a loan, claimant typed "accepted pursuant to terms of a note dated February 28, 1990" on the reverse side of the loan check. Claimant further alleged that under the terms of the First Note, Respondent was obligated to repay \$27,000.00 plus interest at 9% per annum, without notice, protest, presentment or demand, in equal installments on the last day of February 1991, 1992 and 1993, or upon the termination for any reason whatsoever of McCartney's employment with Prudential Securities, Inc.

Claimant alleged that on or about February 1991, Prudential Securities, Inc. made a second loan to the respondent in the amount of \$20,000.00; Respondent signed and returned the Second Note and thereafter cashed the loan check; and that to further document that the \$20,000.00 payment was a loan, Claimant typed "accepted pursuant to terms of a February 28, 1991 note." Claimant further alleged that under the terms of the Second Note, Respondent was obligated to repay \$20,000.00 plus interest at 8.5% per annum, without notice, protest, presentment or demand, in equal installments of \$6,666.67 each, on February 27, 1992, 1993, 1994 or, upon the termination for any reason whatsoever of his employment with Prudential Securities, Inc.

Further, Claimant alleged that on or about June 15, 1991, Respondent voluntarily resigned from Prudential Securities, Inc. to become employed by a competitor; that outstanding balances from the First Note and Second Note totaling \$40,727.00 plus accrued interest became due and owing on or about June 15, 1991; and that Respondent has failed and refused to repay notwithstanding Respondent's receipt of a Demand Letter for amounts due and owing Claimant under the First Note and Second Note.

Respondent maintained that the amount of \$27,000.00 received from Claimant was a bonus from Prudential, which was typical of previous bonuses that he had received in the course of his employment; that Respondent was informed that Prudential had started a new Executive Award Plan for the distribution of its usual annual bonuses which involved the recipient executing a Note; and that Respondent was informed by his supervisors that this was a "tax gimmick" and Prudential would never attempt to collect on the Note. Respondent further maintained that the fact that Respondent was given his bonus despite his refusal to execute the Note indicates that Prudential never intended to enforce the Note.

Respondent also maintained that if the unsigned note is determined to be valid,

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it is still unenforceable in that Respondent was provided with a letter from Prudential stating that it would pay all installments due in the event of "the termination of your employment by P-B Securities without cause or your assignment by P-B Securities to perform nominal functions tantamount to termination without cause." Further, Respondent maintained that Respondent's employment was thereafter changed so that he was removed from his usual trading functions, limiting his usual commissions and his duties became more operational in nature.

Moreover, Respondent maintained that he was fraudulently induced to accept and endorse the bonus check upon the oral representations of his superiors that the Note and that the Note and the Executive Award Plan was an accounting gimmick and would not be enforced. Respondent admitted that on or about June 15, 1991, Respondent resigned from Prudential after 9 years of employment which was precipitated by the reassignment of his duties which limited his opportunities that it was tantamount to termination without cause.

### **RELIEF REQUESTED**

Claimant requested an award against the Respondent for the following:

1. The sum of \$40,727.00;
2. Interest on the First Note at the contract rate of 9% from February 28, 1990 until the date of payment;
3. Interest on the Second Note at the contract rate of 8.5% from February 28, 1991 until the date of payment;
4. The cost of collection, and of this proceeding, as Respondent agreed to pay under the terms of the First Note and Second Note; and
5. Such other relief as the arbitration panel deems just and proper.

Respondents requested that the arbitration panel find in his favor and dismiss the statement of claim of Prudential in its entirety together with the costs and expenses of Respondent and for such other relief as the panel deems just and proper.

### **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:

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1. Respondent be and hereby is liable and shall pay to the claimant the sum of \$38,000.00. interest specifically excluded.
2. Each party shall bear their respective costs, including attorneys' fees.
3. All other claims be and hereby are denied.

### FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitrators have determined that the following Forum Fees are assessed:

1 pre-hearing session x \$300.00 = \$300.00  
2 sessions x \$600.00 = \$1,200.00 minus hearing session deposit of 600 = net \$600.00 due.

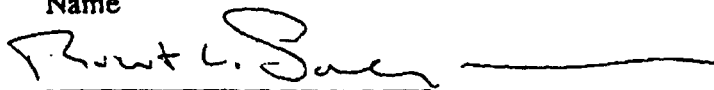
Total outstanding forum fees = \$900.00

Respondent be and hereby is liable and shall pay to the NASD the sum of \$900.00 representing outstanding forum fees.

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

Concurring Arbitrators' Signatures

Name



Robert L. Salzberg, Esq.  
Chairperson - Industry Arbitrator

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John J. O'Neill, Esq.  
Industry Arbitrator

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Thomas E. Wagner  
Industry Arbitrator

Date of Decision: November 3, 1994

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Industry Arbitrator

Thomas E. Wagner  
Industry Arbitrator

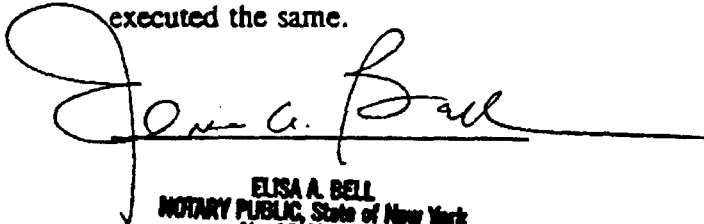
Date of Decision: November 3, 1994

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STATE OF NEW YORK

COUNTY OF NEW YORK

On this 4<sup>th</sup> day of OCTOBER, 1994, before me personally appeared ROBERT L. SALZBERG 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.

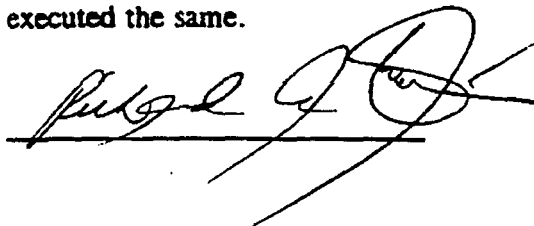


ELISA A. BELL  
NOTARY PUBLIC, State of New York  
No. 03-4818330  
Qualified in Bronx County  
Commission Expires June 30, 1996

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STATE OF New York  
COUNTY OF NASSAU

On this 26 day of September, 1994, before me personally appeared  
JOHN J O'NEILL 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.



RICHARD E. GONZALEZ  
Notary Public, State of New York  
No. 4659245  
Qualified in Nassau County  
Commission Expires Dec. 31, 1995