

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.

93-02858

Name of Respondent

Nobuyuki Mokokoh

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**REPRESENTATION**

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

For Respondent Nobuyuki Mokokoh ("Respondent"): John M. Townsend, Esq.  
with the law firm of Hughes Hubbard & Reed located in Washington, D.C..

**CASE INFORMATION**

Statement of Claim filed: July 21, 1993.

Claimant's Submission Agreement signed on: July 20, 1993.

Statement of Answer filed by Respondent on: September 21, 1993.

Respondent's Submission Agreement signed on: September 20, 1993.

Counterclaim filed by Respondent on: September 21, 1993.

Reply to Counterclaim filed by Claimant on: September 24, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: March 22, 1994 - 2 Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located  
in New York City, New York.

**CASE SUMMARY**

Claimant alleged that on or about July 1, 1986, Respondent commenced his  
employment with Prudential Securities, Inc.; that in February 1990, Claimant

loaned Respondent the sum of \$50,000; and that at the time Respondent received the loan, Respondent was given a promissory note ("the Note"), which Respondent signed and returned to Claimant.

Claimant also alleged that by the terms of the Note, Respondent is obligated to repay \$50,000.00, plus interest at 9% per annum, without notice, protest, presentment or demand, in equal installments of \$16,666.66 each on the last day of February 1991, 1992 and 1993 or, upon the termination, for any reason whatsoever, of his employment with Prudential Securities, Inc.

Claimant further alleged on or about July 30, 1990, approximately three months after receiving the \$50,000.00 loan, Respondent voluntarily resigned from Prudential Securities, Inc. to become employed with a competitor of Prudential Securities, Inc.; that Respondent has failed or refused to repay the balance of \$50,000.00 which became due and owing on or about July 30, 1990, the date of his voluntary resignation from Prudential Securities, Inc.

Claimant alleged that on December 11, 1991, Prudential Securities, Inc. through its legal counsel, sent a letter to Respondent in which a demand was made on Respondent for amounts due and owing to Prudential Securities, Inc. under the Note.

Respondent denied all allegations of wrongdoing as set forth in the Statement of Claim. Respondent maintained that from July 1986 until July 1990, Respondent was employed by the Tokyo branch of Prudential Securities, Inc. Respondent also maintained that the employment relationship was formed under and governed under the laws of Japan.

Respondent further maintained that in July, 1990, after Prudential Securities, Inc. discharged Respondent's supervisor and transferred Respondent to a position with nominal responsibilities, Respondent left the employ of, and premises of, Prudential Securities, Inc.

Further, Respondent maintained that he was informed that Respondent was awarded a bonus of \$50,000.00 under the Executive Award Plan of Prudential Securities, Inc.; that under Japanese law, a bonus such as the one awarded to Respondent must be paid in one installment, and without future conditions or penalties such as liabilities contingent on leaving the firm; and that the Note imposed a penalty on Respondent should Respondent leave the employ of Prudential Securities, Inc., a practice that is illegal under Japanese law.

As and for its counterclaim, Respondent alleged that in addition to the award to Respondent under the Executive Award Plan, Prudential Securities, Inc. awarded Respondent a deferred bonus under the Prudential-Bache Partnership Plan in the amount of \$20,000.00; that no payment has been made under the plan; and that the deferral provisions and conditions are illegal under Japanese law.

Respondent further alleged that on February 8, 1990, Respondent was awarded \$462.88 shares in the Prudential-Bache Incentive Share Plan; that the shares are worth approximately \$25,000.00; and that no payment has been made under the plan.

Claimant in its reply to the counterclaim, denied all allegations set forth in the counterclaim and denied any liability on the part of Prudential Securities, Inc. to Respondent.

### **RELIEF REQUESTED**

Claimant requested an award as follows:

1. The sum of \$53,375.00;
2. Interest on the above-referenced sum at the contract rate of 9% from February 28, 1990 until the date of payment;
3. The cost of collection, and of this proceeding, as Respondent agreed to pay under the terms of the Note;
4. Attorneys' fees; and
5. Such other relief as the arbitration panel deems just and proper.

Respondent requested an award as follows:

1. Dismissal of the Statement of Claim in its entirety;
2. Payment of the Executive Award Plan bonus of \$20,000.00; and
3. Payment of the Incentive Share Plan bonus of \$25,000.00.

Claimant requested that the arbitration panel deny Respondent's counterclaim in its entirety; and award Prudential Securities, Inc. the sum of \$53,375.00, plus interest and attorneys' fees.

### **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.

Respondent requested that the arbitration panel issue a Stay of this arbitration proceeding pending the outcome of litigation commenced on September 2, 1993

against Prudential Securities Japan, Ltd. in the District Court in Tokyo, Japan seeking the same relief sought in the counterclaim and additional relief with respect to the bonus that is the subject of Prudential Securities, Inc.'s Statement of Claim. Respondent argued that the Japanese action will have the effect of adjudicating the consequences under Japanese law of Respondent's employment by the Tokyo branch of Prudential Securities, Inc. and his rights under the bonus plans that are the subject of the claim and counterclaim in this proceeding.

Claimant objected to Respondent's request for a Stay of the arbitration proceeding. Claimant asserted that shortly after being served with Prudential Securities, Inc.'s Statement of Claim, Respondent Mokkoh allegedly filed a legal action against Prudential Securities, Inc. in Japan, which seeks the relief sought in the counterclaim filed by Respondent Mokkoh in the above-captioned arbitration. Claimant also asserted that when Respondent became employed with Prudential Securities, Inc., Respondent agreed that any disputes relating to his employment with Prudential Securities, Inc. would be submitted to arbitration before the NASD or NYSE and that Respondent is obligated to arbitrate his dispute with Prudential Securities, Inc. by virtue of his executing a Uniform Application for Securities Industry Registration ("Form U-4"). Claimant further asserted that Respondent was required to arbitrate this dispute pursuant to Section 8 (a) of the Code of Arbitration Procedure. Therefore, Respondent is precluded from filing an action against Prudential Securities, Inc. in Japan.

This panel finds that it has jurisdiction over Respondent Nobuyuki Mokkoh pursuant to Section 8 of the Code of Arbitration Procedure and pursuant to the Form U-4 executed by Respondent Nobuyuki.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$50,000.00.
2. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$18,375.00 representing interest at the rate of 9% through March, 1994.
3. Respondent be and hereby is liable and shall pay to the Claimant reasonable attorneys' fees in the sum of \$2,649.00 pursuant to the terms of the promissory note.
4. All other claims against the Respondent be and hereby are denied.

5. Claimant be and hereby is liable and shall pay to the Respondent the sum of \$20,000.00 under the terms of the Executive Award Plan.
6. All other claims against the Claimant be and hereby are denied.

#### FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitration panel has determined that the NASD shall retain the \$500.00 non-refundable filing fee deposited by each party and that the NASD shall retain the \$750.00 hearing session deposit deposited by Claimant and the \$600.00 hearing session deposit deposited by Respondent. In addition, the arbitration panel has determined that the following Forum Fees are assessed:

2 sessions X \$750 = \$1,500 minus hearing session deposits of \$1350.00 = net \$150 due.

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$75.00.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$75.00.

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

Concurring Arbitrators' Signatures  
Name

  
Maive R. Giovati, Esq.  
Chairperson - Industry Arbitrator

  
Louis Miron, Esq.  
Industry Arbitrator

  
Sidney Krasner  
Industry Arbitrator

Date of Decision: June 22, 1994

STATE OF

COUNTY OF

On this 24 day of May, 1994, before me personally appeared MAINE STURTI 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.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

STATE OF New Jersey  
COUNTY OF Middlesex

On this 21 day of June, 1994, before me personally appeared LOUIS H. MIRON 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.

Hilda M. Halasz

HILDA M. HALASZ  
NOTARY PUBLIC, State of New Jersey  
My Commission Expires 7/13/94

STATE OF New Jersey  
COUNTY OF Union

On this 28th day of May, 1994, before me personally appeared SIDNEY D. KRASNER 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.

Linda J. Bauer

LINDA J. BAUER  
A Notary Public of New Jersey  
My Commission Expires 11/11/96