

## **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.

Case Number 93-04825

**Name of Respondent**

Gary Bickham

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#### **REPRESENTATION**

For Claimant Prudential Securities, Inc. (hereinafter referred to as "Prudential" or "claimant") appeared Donna Ross Daniels, Esq., in-house counsel with Prudential.

For Respondent Gary Bickham (hereinafter referred to as "respondent") appeared Eric W. Berry, Esq. with the law firm of Moon & Keane, New York City, New York.

#### **CASE INFORMATION**

The Statement of Claim was filed on November 15, 1993. Claimant's Submission Agreement was executed by Kevin Frawley, First Vice President and Associate General Counsel, on January 12, 1994.

Respondent's Statement of Answer was filed on May 5, 1994. Respondent's Submission Agreement was signed on June 16, 1995.

#### **HEARING INFORMATION**

Hearing Dates/ Sessions:	June 16, 1995	-	One Session
	July 5, 1995	-	Two Sessions
	September 19, 1995	-	Two Sessions
	October 16, 1995	-	Two Sessions
	October 17, 1995	-	Two Sessions
	October 27, 1995	-	Two Sessions
	December 4, 1995	-	Two Sessions

The hearings in this matter were held in New York City, New York.

#### CASE SUMMARY

Claimant alleged that on February 14, 1992, Prudential and respondent Bickham voluntarily entered into an employment agreement. Pursuant to the terms of the employment agreement, Prudential was allegedly obligated to pay respondent transitional compensation in the amount of \$94,082.00, to be paid in three equal installments of \$31,360.00, plus 8% interest, on the 14th day of February 1993, 1994, and 1995. Concurrently with respondent's execution of the Employment Agreement, respondent executed a Promissory Note ("note") which obligated respondent to repay \$94,082.00, plus interest at 8% per annum, in equal annual installments of \$31,360.00 on the 14th day of February 1993, 1994 and 1995. The note allegedly provided that the loan would become immediately due and payable upon the termination, for any reason, of respondent's employment with Prudential.

Claimant alleged that it paid respondent the sum on or about February 13, 1993. Thereafter, claimant maintained that it was not obligated to make any additional payments to respondent pursuant to the employment agreement, which states that respondent is not entitled to such transitional compensation if he resigned or is terminated for cause prior to completing three full years of employment. Respondent's employment with Prudential was terminated on or about May 4, 1993 for allegedly violating firm policy. Under the terms of the Employment Agreement, the unpaid portion of the principal of the loan in the amount of \$62,720.00, in addition to the interest which had accrued on the principal, became due and owing on May 4, 1993, the date of respondent's termination. Claimant allegedly issued a demand to respondent to honor his obligation under the Note on or about May 7, 1993. Respondent allegedly failed and refused to honor the obligation.

Respondent denied each and every allegation of wrongdoing asserted in the Statement of Claim. Respondent maintained that he accepted Prudential's offer of employment after being enticed to leave a competitor firm based upon several conditions which included, but were not limited to, receiving a forgivable loan in the amount equal to approximately one-third of his prior year's annual gross commissions earned, which would be forgiven by claimant over a three year period of employment; the receipt of "finder fees" for stockbrokers respondent introduced for employment at Prudential in an amount equal to 3% of any stockbrokers prior year's annual gross commission he introduced to the firm; and the providing of a professional and support environment to respondent Bickham in which to further his career.

Respondent further maintained that claimant failed to honor its agreement with respondent by failing to pay respondent finder fees for stockbrokers he introduced to Prudential. Additionally, respondent maintained that his branch manager, while employed by Prudential, prohibited respondent from pursuing career advancements with Prudential. Respondent also maintained that at all relevant times he diligently carried out his employment tasks, including maintaining commission production levels. Respondent maintained that to his surprise he was advised on May 4, 1993 that respondent was advised that his employment with Prudential was summarily terminated.

Respondent maintained that the Statement of Claim failed to state a claim upon which relief can be granted; that the Employment Agreement and Promissory Note are agreements of adhesion and therefore void and unenforceable; that the amount claimed under the alleged and disputed Employment Agreement and Promissory Note is offset by moneys wrongfully withheld from respondent by claimant as well as business lost by respondent resulting from his wrongful termination and related loss of accounts; that the damages alleged to have been sustained by Prudential were caused solely, or contributed to by, its own actions, negligence, recklessness and/or wrongdoing; and that claimant acted in bad faith and therefore the claim is barred under doctrines of equity.

As a counterclaim, respondent maintained that under the Employment Agreement and based upon verbal agreements between the parties, respondent was entitled to receive a finder's fees for stock brokers he introduced to Prudential. Respondent also asserted that as a result of respondent's wrongful termination he was forced to accept employment outside of New York City where his recruiting abilities were severely impacted; that the vast majority of respondent's accounts were lost resulting in a loss of income to respondent; and that claimant and its employees engaged in slanderous dialogue which caused respondent economic harm.

#### **RELIEF REQUESTED**

Claimant requested that it be granted an award against respondent for the following relief:

1. The sum of \$62,720.00, the amount of unpaid principal, based on respondent's default in repayment of the Note; and
2. Interest on the above-referenced sum, at the contract rate of 8% per annum from February 14, 1993 to the actual date of payment; and
3. 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
4. Any other relief as the arbitrators deem fit.

Respondent requested that the Statement of Claim be dismissed in its entirety. Further, respondent requested that Prudential be ordered to file an amended Form U-5 wherein all references to the termination "for cause" of respondent are deleted and language be inserted stating that respondent engaged in no improper conduct while employed at Prudential and that he was wrongfully terminated. Respondent also requested owed compensation as a result of finder's fees earned and unpaid in the amount of \$60,000.00; damages in the amount of \$75,000.00 due to the forced relocation which severely impacted respondent's recruiting abilities; damages in the amount of \$120,000.00 for the loss of accounts as a result of claimant's wrongfully terminating respondent; and damages in the amount of \$120,000.00 as a result of claimant and its agent making slanderous statements about respondent.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent's asserted counterclaims in the Statement of Answer for which he was seeking relief. Respondent was advised by the NASD, Inc. that such filing was deficient for failure to deposit a filing fee and hearing session deposit pursuant to Section 44 of the Code of Arbitration Procedure. At the hearing, respondent's attorney requested that the panel grant respondent an opportunity to determine whether he intended to re-assert the counterclaims asserted in the Statement of Answer and be granted a waiver of the filing fees if he determined to do so. Subsequently, the panel was advised that respondent elected not to re-assert the counterclaims previously filed by respondent's prior counsel.

### **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 \$55,933.66, plus interest from May 5, 1993 through January 15, 1996 in the amount of \$68,009.34 payable to claimant within 30 days after receipt of this decision. Any outstanding balance due the claimant after the 30 day period has lapsed, shall accrue interest at the legal rate of interest provided under New York Law.
2. Respondent's claim for wrongful discharge be and hereby is denied.
3. Respondent's claim for affirmative damages be and hereby is denied.
4. All other claims be and hereby are denied.
5. Each party shall bear their respective costs, including attorneys' fees.

### **FORUM FEES**

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

12 sessions x \$600.00 = \$7,200.00 - \$600.00 hearing session deposit = \$6,600.00  
2 adjournments x \$600.00 = \$1,200.00

Total = \$7,800.00

Respondent be and hereby is liable and shall pay to the NASD, Inc. the sum of \$7,800.00 representing outstanding forum fees assessed by the panel.

**Concurring Arbitrators' Signatures:**

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Barbara Glenna, Esq.  
Chairperson - Industry Arbitrator

*p* \_\_\_\_\_  
John J. O'Neill, Esq.  
Industry Arbitrator

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Francis X. Flannery  
Industry Arbitrator

I, John J. O'Neill, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

*x* \_\_\_\_\_  
John J. O'Neill

Date of Decision: April 24, 1996

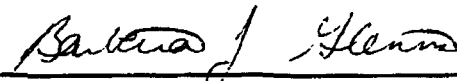
**Concurring Arbitrators' Signatures:**

  
\_\_\_\_\_  
Barbara Glenns, Esq.  
Chairperson - Industry Arbitrator

\_\_\_\_\_  
John J. O'Neill, Esq.  
Industry Arbitrator

\_\_\_\_\_  
Francis X. Flannery  
Industry Arbitrator

I, Barbara Glenns, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
\_\_\_\_\_  
Barbara Glenns

Date of Decision:    April 24, 1996