

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

93-05189

Name of Respondent

Alexander Haverstick

REPRESENTATION

For Claimant Prudential Securities, Inc. appeared Gilbert Boyce, Esq. with the law firm Kutak Rock, Washington, D.C.

For Respondent Alexander Haverstick appeared Joel Forman, Esq. with the law firm Bondy & Schloss, New York City, New York.

CASE INFORMATION

The Statement of Claim was filed on December 16, 1993.
Claimant's Submission Agreement was signed on July 20, 1993

A Statement of Answer and Counterclaim was filed by Respondent Alexander Haverstick on March 21, 1994. An Amendment to the Statement of Answer to include two additional affirmative defenses was filed on December 5, 1994. A second Amendment to the Statement of Answer to include an additional counterclaim was filed on May 3, 1995. Respondent Alexander Haverstick did not file a Submission Agreement.

Claimant's reply to Respondent's Counterclaim was filed on March 30, 1994.

HEARING INFORMATION

Pre-Hearing Conference: December 8, 1994 - 1 session

Hearing Dates/Sessions: June 20, 1995 - 2 sessions
June 21, 1995 - 2 sessions

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

CASE SUMMARY

Claimant Prudential Securities Incorporated ("PSI"), alleged that Respondent, Alexander Haverstick ("Haverstick"), failed to comply with the terms of two promissory notes executed in connection with Prudential's Executive Award Plan. Specifically, Claimant alleged that Respondent executed a promissory note in the amount of \$50,750.00 in February, 1990 ("First Note") after receiving a \$50,750.00 loan whereby Respondent was obligated to repay the same plus interest at 9% per annum in equal installments of \$16,917.00 on the last day of February 1991, 1992 and 1993 or upon the termination for any reason whatsoever of his employment with PSI. Claimant further alleged that to further document the fact that this was loan, PSI typed a legend on the reverse of the loan check stating "Accepted pursuant to terms of a note dated February 28, 1990." Claimant states that only one repayment was made on this First note.

Claimant PSI further alleges that in February, 1991, PSI loaned Haverstick \$56,900.00 in connection with its Executive Award Plan at which time Respondent received the foregoing amount and signed a promissory note in connection with this loan whereby Haverstick was obligated to repay \$56,900.00 plus interest at 8.5% per annum in equal installments of \$18,966.67 each, on the last day of February 1992, 1993 and 1994 or, upon the termination for any reason whatsoever of his employment with PSI. Claimant further alleges that in order to further document the fact this payment was a loan, PSI typed a legend similar to that of the first check on the reverse of the second check with the date of the note being February 1991.

Claimant alleged that on or about January 15, 1992, Haverstick voluntarily terminated his employment with PSI and has failed and refused to repay the outstanding balance of \$33,833.00 on the first loan and \$56,900.00 on the second loan for a total balance of \$90,733.00 plus interest accrued until time of repayment.

Respondent Haverstick maintained that the aforementioned payments were actually compensation paid to him for work he performed at PSI; that he was forced to sign the loan document under threat of being denied his entire bonus for the years in question and that Claimant failed and refused to pay Respondent earned bonus compensation for the 1991 calendar year. Specifically, Respondent maintained that at the time of his 1989 bonus (The time at which the First note was executed), he was informed the purported loan agreement was an "accounting gimmick" that was not intended to create an obligation to repay the loan and that the proceeds of the loan were actually bonus compensation. Respondent further maintained that he was informed that he had no choice but to sign the papers if he wanted to receive any part of his 1989 bonus and that since the bonus compensation had been an integral part of Respondent's compensation, he had no choice but to sign given the need to support his family. Respondent also maintained that in February 1991, he was advised that the \$56,900 portion of his \$110,000 bonus in the form of a loan agreement was a mere formality that would have no ramification upon his entitlement to this bonus compensation and that execution of this agreement was essential to his receipt of bonus compensation.

In addition, Respondent maintained that at no time did anyone at PSI inform him that the bonus compensation paid in February, 1990 and February, 1991 represented compensation to prospective work, but rather that it was understood by both Respondent and Claimant that Respondent was being compensated for work already performed.

Respondent claims, in defense, that PSI's claims are barred by the equitable doctrine of unclean hands; that the documents were obtained through fraud/duress and, therefore, void and unenforceable; and that the loan documents contravene public policy and/or the Labor Law of New York. Respondent asserted as is counterclaim that bonus compensation for the 1991 calendar year was to be in the range of \$175,000 to \$200,000 as informed by officers of PSI; that it was not paid and is presently due and owed; and that the wrongful withholding is a violation of section 198 of the New York Labor Law which entitles Respondent to damages equal to 25 % of the amount withheld and attorneys' fees incurred in bringing the counterclaim.

RELIEF REQUESTED

Claimant requested that the panel find in its favor and against Respondent Haverstick and that it award Claimant the following:

1. The sum of \$90,733;
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 Haverstick agreed to pay under the terms of the First and Second Notes; and
5. Such other relief as the arbitration panel deems just and proper.

Respondent requested that the panel dismiss Prudential's claim in its entirety, and further requested that he be awarded the sum of \$250,000.00 on his counterclaim together with reasonable attorneys' fees, filing costs and such other relief as may be just and proper.

Claimant requested that the panel deny Respondent's counterclaims in their entirety and award it the sum of \$90,733.00, plus interest and attorneys' fees pursuant to the terms of the Notes signed by Haverstick in 1990 and 1991.

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.

This panel finds that Respondent Haverstick was required to sign a submission agreement pursuant to Sections 8 and 25 of the Code of Arbitration Procedure, Haverstick being associated with an NASD member firm at the time this controversy arose. This panel finds that it has jurisdiction over Respondent pursuant to Section 8 of the Code of Arbitration Procedure and pursuant to the Form U-4 executed by Respondent Haverstick.

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. All claims against Respondent Haverstick be and hereby are denied.
2. Claimant's claim for attorney's fees be and hereby is denied.
3. Prudential Securities, Inc. be and hereby is liable and shall pay to Alexander Haverstick the sum of \$100,000.00, exclusive of interest, for the 1991 bonus.
4. Claimant be and hereby is liable and shall pay to the Respondent the sum of \$5,000.00 representing attorneys fees pursuant to New York Labor law.
5. Each party shall bear their respective costs.
6. All other claims be and hereby are denied.

FORUM FEES

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

filing fee x \$500	= \$ 500.00
counterclaim filing fee x \$500	= \$ 500.00
1 pre-hearing conference x \$300	= \$ 300.00
4 hearing sessions x \$750	= \$ 3,000.00
TOTAL FORUM FEES ASSESSED	= \$ 4,300.00

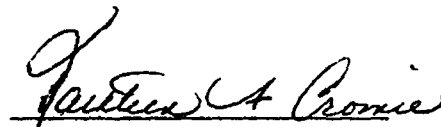
Claimant be and hereby is liable and shall pay to the NASD, Inc. the sum of \$2,150.00 representing one-half of the forum fees assessed against the parties. However, Claimant previously deposited the sum of \$1,250.00 with the NASD. Therefore, the amount due and owing to the NASD is \$900.00.

Respondent be and hereby is liable and shall pay to the NASD, Inc. the sum of \$2,150.00 representing one-half of the forum fees assessed against the parties. In addition, pursuant to Section 30 of the Code of Arbitration Procedure, the arbitrators had previously assessed the sum of \$750.00 for a first adjournment which was granted and \$1,000.00 for a second adjournment which was granted. However, Respondent had previously deposited the sum of \$1,250.00 with the NASD. Therefore, the amount due and owing to the NASD is \$2,650.00.

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

Concurring Arbitrators' Signatures
Name

M. David Hyman, Esq.
Industry Chairperson


Kathleen Cromie
Industry Arbitrator

Frank Piazza
Industry Arbitrator

STATE OF

COUNTY OF

On this 6th day of June, 1995, before me personally appeared Kathleen A. Cromie 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.



EVELYN RODRIGUEZ CHONG
Notary Public, State of New York
No. 41 5010505
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 28, 1997

Date of Decision: July 12, 1995

Respondent be and hereby is liable and shall pay to the NASD, Inc. the sum of \$2,150.00 representing one-half of the forum fees assessed against the parties. In addition, pursuant to Section 30 of the Code of Arbitration Procedure, the arbitrators had previously assessed the sum of \$750.00 for a first adjournment which was granted and \$1,000.00 for a second adjournment which was granted. However, Respondent had previously deposited the sum of \$1,250.00 with the NASD. Therefore, the amount due and owing to the NASD is \$2,650.00.

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

Concurring Arbitrators' Signatures
Name

M. David Hyman, Esq.
Industry Chairperson

Kathleen Cromie
Industry Arbitrator

Frank Piazza
Industry Arbitrator

STATE OF

COUNTY OF

On this 3 day of July, 1995, before me personally appeared FRANK PIAZZA 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.

Dorothy Lynn Palladino

DOROTHY LYNN PALLADINO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 28, 1998

Date of Decision: July 12, 1995