

**N.A.S.D. AWARD****NASD Regulation, Inc. Office of Dispute Resolution**

In the Matter of the Arbitration Between

**Name of Claimant**

Prudential Securities, Inc.

94-01570

**Name of Respondent**

Brian Dominick Paonessa

**REPRESENTATION**

For Claimant Prudential Securities, Inc. ("PSI"): John B. T. Murray, Jr., Esq. of Steel Hector & Davis, West Palm Beach, Florida.

Respondent Brian Dominick Paonessa ("Paonessa") appeared pro se (see "Other Issues").

**CASE INFORMATION**

Statement of Claim filed: April 18, 1994.

Claimant's Submission Agreement signed on: February 18, 1994 by Debbie Stone Mishan on behalf of the firm.

Statement of Answer and Counterclaim filed by Respondent Paonessa on: August 8, 1994.

Respondent Paonessa's Submission Agreement signed on: August 8, 1994.

Claimant's Reply and Motion to Dismiss Respondent's Counterclaim filed: September 7, 1994.

**HEARING INFORMATION**

On August 17, 1998 a hearing lasting one (1) session was conducted in Boca Raton, Florida.

**CASE SUMMARY**

Claimant alleged that on April 3, 1989 PSI loaned Paonessa the sum of \$38,250.00 and executed a promissory note; that pursuant to the terms of the promissory note, Paonessa was required to repay the loan in three equal installments of \$12,750.00 plus 10% interest, payable on April 3, 1990, April 3, 1991, and April 3, 1992; and, that the promissory note provided that if Paonessa failed to make a scheduled payment, Claimant was entitled to recover all costs and attorney's fees incurred in the collection of the unpaid amount. Claimant further alleged that Paonessa failed to make the payment due and owing on April 3, 1992; therefore, PSI asserted this claim under the promissory note for the unpaid principal, interest, attorneys' fees and costs.

In his response to the Statement of Claim, Respondent Paonessa denied that he owes Prudential the amount in question and asserted a counterclaim against Prudential alleging the following: that by utilizing false and malicious U-5 filings against him, Prudential has prevented him from earning a living as a

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Series 7 Registered Representative; that by utilizing expensive "Goliath" and "scorched earth" tactics Prudential is preventing him from earning a living consulting in arbitration cases; that Prudential is attempting to deprive investors of their rights to arbitrate their grievances by delaying or preventing him (Paonessa) from informing investors of wrongdoings prior to the statute of limitations running out; and, that Prudential has refused to close their "open investigation" claimed on the NASD Form U-5, although no attempt to investigate the matter was ever made.

Claimant denied the allegations of wrongdoing contained in Paonessa's counterclaim.

**RELIEF REQUESTED**

Claimant requested an award in the amount of \$12,750.00 plus interest at 10% per annum from April 3, 1992 to August 17, 1998; costs incurred by PSI including the NASD filing fee and other administrative costs; reasonable attorneys' fees; and, dismissal of the counterclaim.

Respondent Paonessa requested a dismissal of the Statement of Claim; that Prudential be forced to close its "open investigation" against him; that Prudential be forced to reverse its false U-5 filing pertaining to the William H. Beckham Trust and issue a written apology to him (Paonessa); and, that Prudential be ordered to pay the sum of \$100,000.00 annually for the next twenty (20) years as compensation for destroying Paonessa's career as a registered representative.

**OTHER ISSUES CONSIDERED & DECIDED**

On July 30, 1998, the arbitration panel issued an order granting Claimant's Motion to Dismiss Respondent's Counterclaim.

Arbitrator Paul E. Gracey, Jr. did not attend the hearing, and, by agreement of the attending parties and the remaining arbitrators, the hearing proceeded with two arbitrators.

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 NASD Regulation, Inc.

Respondent Paonessa did not attend the hearing. However, upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Paonessa has been properly served with the Statement of Claim pursuant to rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Paonessa has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

**AWARD**

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

1. Respondent Paonessa is found liable and shall pay to the Claimant the sum of \$12,750.00 plus pre-judgment interest at 10% per annum, from April 3, 1992 to August 17, 1998, in the amount of \$13,352.52, for a total of \$26,102.52.
2. Respondent Paonessa is found liable and shall pay to the Claimant attorney's fees in the amount of \$1,000.00, pursuant to the terms of the promissory note.

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3. As stated above, Respondent's counterclaim is dismissed in its entirety.
4. Respondent shall pay to Claimant the sum of \$600.00 representing reimbursement of the claim filing fee of \$500.00 as well as a portion of the hearing session deposit of \$100.00 previously deposited by the Claimant.

#### **FORUM FEES**

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10205 of the Code, the arbitrators have assessed forum fees in the amount of \$1,000.00 (one hearing session x \$1,000.00).

1. Respondent Paonessa shall pay forum fees in the amount of \$1,000.00 for which NASD Regulation, Inc. shall retain the \$100.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Paonessa of \$900.00.

#### **OTHER FEES**

1. Pursuant to Rule 10205 of the Code, the Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$500.00.
2. Pursuant to Rule 10205 of the Code, the Respondent shall pay to NASD Regulation, Inc. the claim filing fee of \$500.00 for the counterclaim.
3. Pursuant to Rule 10205 of the Code, the Claimant has paid to NASD Regulation, Inc. the member surcharge of \$200.00.
4. Pursuant to Rule 10319(b) of the Code, the Claimant has paid to NASD Regulation, Inc. \$300.00 representing PSI's portion of the \$600.00 postponement fee for the hearing scheduled for January 18 and 19, 1996.
5. Pursuant to Rule 10319(b) of the Code, the Respondent shall pay to NASD Regulation, Inc. \$300.00 representing his portion of the \$600.00 postponement fee for the hearing scheduled for January 18 and 19, 1996.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

#### **ARBITRATION PANEL**

Concurring Arbitrators' Signatures

\_\_\_\_\_/s/\_\_\_\_\_  
Lewis J. Levey, Esq.

\_\_\_\_\_/s/\_\_\_\_\_  
David P. Wardwell

Date of Decision: September 23, 1998