

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities Incorporated

Case No. 84-01571

Name of Respondent

Raul Larios

REPRESENTATION OF PARTIES

For Claimant Prudential Securities Incorporated ("PSI"): Mark S. Dobin, Esq. of the law firm of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

For Respondent: Christopher M. David, Esq. of the law firm of Hall and O'Brien, P.A., Miami, Florida until May 16, 1996. Thereafter, Mr. Larios appeared pro se.

CASE INFORMATION

Statement of Claim was filed on April 25, 1994. Claimant's Submission Agreement was signed on April 18, 1994.

Statement of Answer was filed by Respondent on September 27, 1994. Respondent did not file a Submission Agreement.

HEARING INFORMATION

Evidentiary hearings were conducted on May 29, 1997 and January 20, 1998 in Fort Lauderdale, Florida for a total of three sessions.

CASE SUMMARY

Claimant alleged the following: On May 17, 1991, Respondent voluntarily entered into an employment agreement with PSI, the terms of which provided the Respondent with a transitional compensation package. The transitional compensation was paid based upon the agreement that Respondent would complete 4 years of employment with PSI. Respondent violated the terms of his agreement when he resigned on February 11, 1994. Respondent retained \$37,710.34 of unearned compensation and to date has failed to honor his obligation to repay

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant did not prove its breach of contract claim because it has failed to prove all the required elements of that claim: formation, performance, breach, and damages. Respondent asserted the affirmative defenses of fraud in the inducement, material misrepresentation, and good faith.

RELIEF REQUESTED

Claimant requested an award in the amount of \$37,710.34, interest, costs and attorney's fees.

Respondent requested dismissal, attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent did not file with NASD Regulation, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared and testified at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

2. 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 Regulation, Inc. Office of Dispute Resolution.

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AWARD

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

1. Respondent is found liable and shall pay to Claimant the amount of \$37,710.34, plus interest at the rate of 8% per annum (from February 18, 1994 to February 18, 1998) in the amount of \$13,951.13 for a total due to the Claimant of \$51,661.47.
2. Claimant's request for costs is denied. Claimant withdrew its request for attorney's fees during its closing argument and, therefore, the panel made no determination with respect to that request.
3. Respondent's request for attorney's fees and costs are denied.

FORUM FEES

Pursuant to Rule 10205(b) of the NASD Code of Arbitration Procedure ("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(c) of the Code, the panel has assessed forum fees in the amount of \$1,800.00. (3 hearing sessions x \$600.00 per session).

1. Claimant is assessed the sum of \$900.00, for which NASD Regulation, Inc. shall retain the \$600.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$300.00, payable to NASD Regulation, Inc.
2. Respondent is assessed the sum of \$900.00 payable to NASD Regulation, Inc.
3. Respondent shall pay to NASD Regulation, Inc. the further sum of \$600.00 for the postponement of the hearing scheduled for October 2 and 3, 1995.
4. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimant.

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5. Pursuant to Rule 10333 of the Code, Respondent, Prudential Securities shall pay to NASD Regulation, Inc. the \$200 past due member surcharge which was previously invoiced.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrator's Signatures

/s/

Lionel P. Greenbaum
Industry Arbitrator, Presiding Chair

/s/

James D. McDonald
Industry Arbitrator

/s/

Irving I. Hanzman
Industry Arbitrator

Date of Decision: 3-5-98