

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.

94-02301

Name of Respondent

Paul J. Hauser

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on June 16, 1994, Claimant Prudential Securities Inc. ("PSI"), through its representative and in-house counsel, Christopher Freeze, Esq., alleged that Respondent Paul J. Hauser (the "Respondent") breached his employment agreement with PSI. PSI alleged that on or about April 15, 1991, PSI and Respondent voluntarily entered into an employment agreement (the "Agreement"). PSI further alleged that, when Respondent became employed by PSI, he was loaned \$40,724.00 for which he signed a promissory note (the "Note") concurrent with the signing of the Agreement. PSI contended that, under the terms of the Note, Respondent is obligated to repay PSI \$40,724.00, plus 8% interest, in three equal annual installments of \$13,575.00 on the first day of May 1992, 1993 and 1994. PSI further contended that the Note provides that the loan would become immediately due and payable upon the termination, for whatever reason, of Hauser's employment with PSI. PSI alleged that on February 25, 1994, Respondent resigned from PSI and the balance of \$13,575.00 became due and owing on the day of resignation. PSI further alleged that on April 22, 1994, PSI issued a demand to Respondent to honor his obligation under the Note, and that, to date, Respondent has failed to honor this obligation. PSI contended that, as a result of the above, it has suffered a loss for which the Respondent should be held liable.

Respondent Paul Hauser ("Respondent"), through his representative, Noel W. Hauser, Esq., of Noel W. Hauser and Associates in New York, NY, maintained that Respondent and PSI entered into an Employment Agreement and signed a promissory note in favor of PSI on April 15, 1991, and that these documents together reflect a three year Employment Agreement between the parties, which included payment of the sum of \$40,724.00. The Respondent further maintained that although "it is true that stated sum is facially structured as a "loan" by PSI to be "forgiven" in three equal installments, this "annual forgiveness" transparency should be ignored and the \$40,724.00 be treated as part of the Respondent's three year compensation package. Respondent contended that when he left claimant's employ, it was no more than weeks before the final "annual forgiveness" date. Respondent further contended that he remained in PSI's employ, despite a great deal of negative publicity generated by claimant's conduct towards its customers, for more than 95% of the intended three year term of his employment. Respondent maintained that "his resignation was virtually forced by reason of highly publicized disclosures made in the press . . . that claimant had been engaged in conduct which . . .

involved its sponsorship of the bilking of hundreds of millions of dollars of invested capital." Respondents further maintained that as a result of the above, he should not be held liable.

### **RELIEF REQUESTED**

Claimant Prudential Securities Inc. requested \$9,999.00 in actual damages, plus interest at 8% per annum from February 25, 1994, to the date of payment, in addition to costs and attorney's fees.

Respondent Paul J. Hauser requested that the claims of the Claimant be dismissed.

### **AWARD**

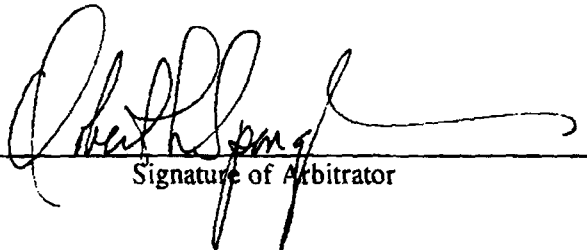
Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure and upon the request of Respondent Paul J. Hauser, a panel of three Industry Arbitrators was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Prudential Securities Inc., on April 25, 1994, but not by Respondent Paul J. Hauser as is required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

And, the Arbitrators, having considered the proof of the parties, have decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Paul J. Hauser is liable and shall pay to Claimant Prudential Securities Inc. \$9,999.00 in actual damages.
2. Respondent Paul J. Hauser is liable and shall pay to Claimant Prudential Securities Inc. interest at the rate of 8% per annum from February 25, 1994, to date of payment of the award.
3. Respondent Paul J. Hauser is liable and shall pay to Claimant Prudential Securities Inc. \$500.00 as reimbursement of attorneys' fees pursuant to the Employment Agreement entered into by the parties.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.. Respondent Paul J. Hauser is liable and shall pay to the Claimant Prudential Securities Inc. \$287.50 as reimbursement of one-half of the filing fee.

**AFFIRMATION**


I, **ROBERT L. SPANGLER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

**AFFIRMATION**

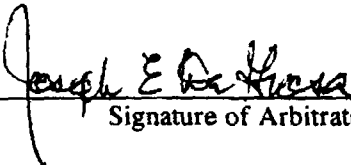
I, **RICHARD S. PESKIN, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

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**AFFIRMATION**

I, <sup>DAGROSSA</sup>JOSEPH E. DAGROSSA, ~~ESQ.~~, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: February 7, 1996