

9609176

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

PRUDENTIAL SECURITIES INCORPORATED,

Claimant,

-and-

No. 95-04382

RONALD L. GROSS

Respondent.

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Securities Dealers

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REPRESENTATION OF PARTIES

For Claimant: Prudential Securities Incorporated was represented by Steven P. Gomberg, Esq., Gomberg Kane & Fischer, Ltd., 208 South LaSalle Street, Suite 1800, Chicago, Illinois 60604.

For Respondent: Ronald L. Gross represented himself.

CASE INFORMATION

Statement of Claim filed: (on or about) September 11, 1995.

Claimant's Submission Agreement signed on: September 11, 1995.

Respondent's Statement of Answer was filed: (on or about) November 20, 1995.

Respondent's Submission Agreement signed on: October 17, 1995.

HEARING INFORMATION

The hearing was held on Wednesday, September 11, 1996, in St. Louis, Missouri, for a total of one (1) session.

CASE SUMMARY

Claimant, Prudential Securities Incorporated ("Claimant"), alleged that the Respondent, Ronald L. Gross ("Respondent"), entered into a Promissory Note on June 23, 1994, (the "Note"), which by its terms, Respondent agreed to repay the sum of \$41,015.00 in forty-three (43) equal monthly installment payments at the end of each commission month beginning with November, 1994 and continuing through May, 1998, plus interest at the rate of 6% per annum. Claimant alleged that the Note provided for the payment of the entire amount due in the event of the termination, for any reason, of employment during the term of the Note. Respondent was terminated for cause on June 22, 1995, and there was a remaining balance due on the Note in the amount of \$33,384.30 plus interest. On or about June 28, 1995 and August 7, 1995, Claimant tendered demands to Respondent

for the balance due under the Note plus interest. Claimant alleges that to date Respondent has failed and refused to honor his obligation to Prudential Securities Incorporated under the Note.

Respondent filed an Answer on or about November 20, 1995. In his Answer, Respondent alleged that he did not enter into the Note and Employment Agreement voluntarily and that Claimant is barred from proceeding due to the doctrine of unclean hands. Respondent further alleged that Claimant breached the Employment Agreement and Note and is barred from recovering under the Note due to the doctrine of failed consideration.

RELIEF REQUESTED

Claimant requested an award against Ronald L. Gross as follows:

- The principal balance due and owing under the Note in the amount of **\$33,384.30;**
- Interest on the balance due and owing under the Note from 06/22/1995 to 09/11/1996 at the contract rate of 6% per annum (\$5.49 per day) in the amount of **\$2,454.03;**
- Interest on the balance due and owing under the Note at the contract rate of 6% (\$5.49) per day from 09/11/1996 to date of payment;
- Attorneys fees and costs as agreed to under the terms of the Note; and
- Any other relief as the Arbitrators deem just.

Respondent requested that the arbitrators deny recovery to Claimant and that Respondent recover his costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about August 28, 1996 Claimant filed a Motion to Preclude pursuant to §25(b)(2)(i)(ii), and 32(b)(c) of the Code of Arbitration Procedure (the "Code"). After consideration of the motion, at the hearing, and deliberation, the undersigned arbitrators denied Claimant's motion.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

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Respondent, Ronald L. Gross is liable for, and shall pay to the Claimant the sum of \$41,370.71 consisting of: The principal balance of \$33,384.30; interest on the balance due under the Note of \$2,454.03; attorney's fees as provided for pursuant to the Note of \$3,951.50; and costs provided pursuant to the Note of \$1,580.88.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$600 = \$600 in forum fees. Pursuant to §44(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §44(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Dispute Resolution by the Claimant.

Pursuant to §45 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$ 200 previously paid by the Claimant.

Dated:

Thomas C. Borsig /s/
Thomas C. Borsig
Industry Arbitrator, Presiding Chair

September 11, 1996

William J. Westphal /s/
William J. Westphal
Industry Arbitrator

September 11, 1996

Hugh V. Murray /s/
Hugh V. Murray
Industry Arbitrator

September 11, 1996