

9611084

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC

In the Matter of the Arbitration Between

© National Association of
Securities Dealers, Inc.

Name of Claimant

1996

Prudential Securities, Incorporated

All Rights Reserved

and

Case Number 95-04546

Name of Respondent

Alex Montez, Jr.

REPRESENTATION OF PARTIES

Prudential Securities, Inc. ("Claimant") was represented by David D. Sterling, Esquire of Baker & Botts L.L.P. located in Houston, Texas.

Alex Montez, Jr. ("Respondent") was represented by Michael E. Karney, Esquire of Giron & Gregory located in Little Rock, AR.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 1995.

The Submission Agreement of the Claimant was signed on September 8, 1995 by Ron Jamison, Vice President, of Prudential Securities, Inc.

The Statement of Answer and Counter-Claim was tiled by the Respondent on or about November 1, 1995.

The Submission Agreement of the Respondent was signed on October 31, 1995.

Claimant's Response to the Respondent's Counter-Claim was filed on or about November 8, 1995.

HEARING INFORMATION

The hearing was held in Little Rock, Arkansas on September 24, 1996 for a total of two (2) hearing sessions.

CASE SUMMARY

In the Statement of Claim, Prudential Securities, Inc. ("Prudential") alleged that Alex Montez ("Montez") was liable for a \$270,000 balance on a promissory note (the "Note"). On October 25, 1994, the day upon which Prudential hired Montez as a Financial Advisor, Claimant loaned Montez \$270,000 and Respondent signed the Note, promising to repay the \$270,000 plus interest at a rate of 7% per annum. Pursuant to the terms of the Note, Montez allegedly agreed that payment was to be made by deducting \$6,279.07 plus accrued interest from his monthly net commission check after taxes starting in March of 1995. According to the Claimant, the Note provided that the loan would be immediately due and payable without notice upon the termination of Montez's employment with Prudential. On October 25, 1994, Montez allegedly also executed an employment agreement containing a provision that Prudential would pay Montez transitional compensation of \$270,000 plus interest to be paid to Respondent in 43 monthly payments of \$6,279.07 beginning in March of 1995. Each of the payments for transitional compensation were allegedly to be credited to Montez's monthly commission check and would be subject to all applicable withholding taxes. Prudential contended that Montez would only be entitled to such payments if he was not in default on making any payments owed by him to Prudential, had not been terminated by cause and was still employed by Prudential. Prudential further contended that Montez made a material misrepresentation on his employment application regarding graduating or receipt of a degree from the University of Arkansas. As alleged, Prudential terminated Montez effective February 21, 1995 based on falsification or omission of information in the employment application pursuant to the terms of the employment agreement and Prudential's policy. Prudential claimed that as of February 21, 1995, the balance of the Note in the amount of \$270,000 was due and owing.

In his Statement of Answer and Counter-Claim, Alex Montez, Jr. denied the allegations set forth in the Statement of Claim. Respondent specifically stated the termination was without cause and therefore pursuant to the employment agreement, all unpaid monies owed at the time of termination were accelerated compensation. Montez affirmatively stated that Prudential breached the covenant of good faith and fair dealing implied in connection with the employment agreement. Montez claimed that he was not afforded the opportunity to rectify the alleged discrepancy and that the alleged discrepancy was an immaterial term of the employment agreement and did not justify termination. Montez alleged that Prudential had tortiously interfered with the prospective business advantages and relationships between Montez and his customers and that Prudential had injured the business reputation of Montez for which Respondent sought damages.

Prudential Securities, Inc. responded to the Counter-Claim by denying that Montez was entitled to transitional compensation. Prudential further denied all allegations of wrongdoing and denied that Montez was wrongfully terminated.

RELIEF REQUESTED

9611059

Claimant requested an award in the amount of \$270,000 for the balance due on the Note plus interest at the rate of 7% per annum from February 21, 1995 to the date of payment as well as costs and attorneys' fees.

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded damages in an undetermined amount plus costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD Regulation, Inc.

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:

- (1) Respondent Alex Montez, Jr. is hereby liable for and shall pay to Claimant Prudential Securities, Inc. the sum of \$270,000 in actual damages plus simple interest at a rate of 7% per annum from February 21, 1995 until date of payment;
- (2) The Counter-Claim submitted by Respondent Alex Montez, Jr. is hereby denied in its entirety;
- (3) All requests for relief not specifically granted herein are hereby denied in their entirety; and
- (4) The parties shall pay their own costs including attorneys' fees except for those fees specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There were two (2) hearing sessions x \$750 = \$1,500 in forum fees. Pursuant to Section 10205(b) of the Code of Arbitration Procedure (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 Section 10205(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") 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 \$750 previously deposited

9611089

NASD Regulation
Arbitration No. 95-04546
Award Page 4 of 4

with the NASD Regulation, Inc. by the Claimant Prudential Securities, Inc. The NASD Regulation, Inc. shall also retain the member surcharge in the amount of \$350 previously paid pursuant to Section 10333 of the Code by the Claimant Prudential Securities, Inc.

Pursuant to Section 10205(c) of the Code, the NASD Regulation, Inc. 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 the NASD Regulation, Inc. by the Respondent, Alex Montez, Jr. Respondent Alex Montez, Jr. is hereby liable for and shall pay to the NASD Regulation, Inc. the sum of \$150 in additional forum fees. The NASD Regulation, Inc. shall also retain the retain postponement fees in the amount of \$750 previously deposited by the Respondent, Alex Montez, Jr.

Signed :

Dated :

James Mervin Benson, Esquire
James Mervin Benson, Esquire
Industry Arbitrator, Presiding Chair

November 7, 1996

Chris Melton, Esquire
Chris Melton, Esquire
Industry Arbitrator

October 28, 1996

Judith Lawson Johnson
Judith Lawson Johnson
Industry Arbitrator

October 28, 1996

Date served by the NASD Regulation, Inc. : November 8, 1996