

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

and

96-03406

Name of Respondent

Lanis D. Noble

REPRESENTATION OF PARTIES

Prudential Securities, Inc. ("**Claimant**") was represented by Steven P. Gomberg, Esq., Gomberg Kane & Fischer, Ltd., Chicago, Illinois.

Lanis D. Noble ("**Respondent**") was represented by James C. Rhoden, Esq., Columbia, Mississippi.

CASE INFORMATION

The Statement of Claim was filed on or about August 8, 1996. Response to Respondents' Answer and Counterclaim was filed on or about October 15, 1996. First Amended Statement of Claim was filed on or about March 25, 1997. Submission Agreement of Claimant Prudential Securities, Inc. was signed on July 2, 1996 by Gabriel Loubier.

Statement of Answer and Counterclaim was filed by Respondent Lanis D. Noble on or about September 24, 1996. Statement of Answer to Claimant's First Amended Statement of Claim was filed on or about April 10, 1997. Submission Agreement of Respondent Lanis D. Noble was signed on September 18, 1996.

HEARING INFORMATION

The hearing was held on Thursday, May 1, 1997 in New Orleans, Louisiana for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that the Respondent entered into a Promissory Note on September 10, 1991, (the "Note"), which by its terms, Respondent agreed to repay the sum of \$122,504.00 in four annual installment payments of \$30,626.00 on the 10th day of September 1992, 1993, 1994 and 1995, plus interest at the rate of 8% 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. In addition, Claimant alleged that Respondent was not entitled to any unpaid transitional compensation if Respondent resigned or was terminated for cause.

Claimant further alleged that in June, 1987, during Respondent's first term of employment with Claimant, Respondent was overpaid \$74,361.04 in his personal account with Prudential, account number OSV-865925, on the redemption of 563,000 Mississippi Housing Finance Bonds ("HFC" bonds). Claimant also alleged that Respondent should have known of the overpayment on the HFC bonds and knowingly, intentionally and fraudulently concealed the overpayment on the HFC bonds from Prudential. Claimant further alleged that because Respondent fraudulently concealed the overpayment on the HFC bonds and removed the money from his account when he resigned from his first term of employment with Prudential on August 26, 1987, Prudential could not have known of the overpayment. Prudential alleges that it did not learn of the overpayment until July, 1992, during Respondent's second term of employment with Prudential.

Respondent voluntarily resigned from his second term of employment with Prudential on January 19, 1993, and there was a remaining balance due on the Note in the amount of \$91,878.00 plus interest and also an unsecured debit in Respondent's personal account with Prudential in the amount of \$74,361.04. Claimant alleges that to date Respondent has failed and refused to honor his obligation to Prudential Securities Incorporated under the Note and for the unsecured debit balance incurred as a result of the reversal of the overpayment on the HFC bonds.

Respondent filed an Answer and Counterclaim on or about September 18, 1996. In his Answer and Counterclaim, Respondent alleges that Prudential's claims against Respondent which were asserted in a previously filed arbitration, have been settled and that Prudential's Statement of Claim is a "frivolous and vexatious attempt to relitigate a matter that has already been settled.

Claimant filed a Reply to Respondent's Answer and Counterclaim on or about October 15, 1996. Claimant denies any allegations of wrongdoing and denies that this matter has ever been settled between the parties.

RELIEF REQUESTED

Based on its Statement of Claim and First Amended Statement of Claim, Claimant requests that an award be entered in favor of Prudential and against Lanis D. Noble as follows:

- That Respondent committed fraud and knowingly and intentionally concealed the overpayment on the HFC bonds from Prudential.
- The principal balance due and owing under the Note in the amount of \$91,878.00;
- Interest on the balance due and owing under the Note from 09/11/1992 to 01/19/1993, at the contract rate of 8% per annum (\$20.14 per day) in the amount of \$2,638.34;
- Interest on the balance due and owing under the Note from 01/19/1993 to 05/01/1997, at the contract rate of 8% per annum (\$20.14 per day) in the amount of \$31,478.82;
- Interest on the balance due and owing under the Note at the contract rate of 8% (\$20.14) per day from 05/01/1997 to date of payment;
- The unsecured debit balance as a result of the overpayment on the HFC bonds in amount of \$74,361.04;
- Interest on the unsecured debit balance from 07/24/1992 to 05/01/1997, at the rate of 10% per annum (\$20.37 per day) in the amount of \$35,504.91;
- Interest on the unsecured debit balance at the rate of 10% (\$20.37) per day from 05/01/1997 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 dismissal of Claimant's Statement of Claim and expenses of Respondent including attorneys' fees, cost, travel expense and loss worktime of \$10,000.00

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD.

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 Lanis D. Noble shall be and hereby is liable for and shall pay to the Claimant Prudential Securities, Inc. the sum of \$235,861.11 (**two hundred thirty five thousand eight hundred sixty one dollars and eleven cents**). In making this award, the undersigned arbitrators make a specific finding of fraud against Respondent Lanis D. Noble.

2. Respondent Lanis D. Noble shall be and hereby is liable for and shall pay to the Claimant Prudential Securities, Inc. the sum of \$14,883 (**fourteen thousand eight hundred eighty three dollars**) as attorneys' fees.
3. Respondent Lanis D. Noble shall be and hereby is liable for and shall pay to the Claimant Prudential Securities, Inc. the sum of \$2,673.38 (**two thousand six hundred seventy three dollars and thirty eight cents**) as costs.
4. Interest at the rate of 7% per annum is awarded on the above stated sums from and inclusive of the date this award is served on Respondent Lanis D. Noble to and inclusive of the date this award is paid in full.
5. The counterclaim asserted in this matter shall be and hereby is denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §10205(b) 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 §10205(c) of the NASD Code of Arbitration Procedure, 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 \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Prudential Securities, Inc. Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, 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 \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondent Counterclaimant Lanis D. Noble. Respondent Lanis D. Noble shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$450 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Industry Arbitrator, Presiding Chair

Dated: May 5, 1997

/s/ Frederick H. Bruce
Frederick H. Bruce
Industry Arbitrator

May 5, 1997

/s/ Robert J. Eitel
Robert J. Eitel
Industry Arbitrator

May 7, 1997