

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Prudential Securities, Inc.

96-04884

Name of Respondent

Philip R. H. Connor, III

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*Consolidated With*

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In the Matter of Arbitration Between

Name of Claimant

Prudential Securities, Inc.

96-04886

Name of Respondent

Anastasio Carayannis

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**REPRESENTATION**

For Claimant Prudential Securities, Inc. ("PSI" or "Claimant") appeared Stephen Rattner, Esq. of the law firm Rosenman & Colin LLP with offices located in New York, New York.

For Respondents Philip R. H. Connor, III ("Connor") and Anastasio Carayannis ("Carayannis"), collectively referred to as "Respondents," appeared Marc S. Gottlieb, Esq. of the law firm Beckman & Millman, P.C. with offices located in New York, New York.

**CASE INFORMATION**

Claimant's Statements of Claim were filed on November 1, 1996 in both matters.

Claimant filed an Answer to the Counterclaims on March 14, 1997.

Claimant's Submission Agreements were signed on October 31, 1996.

A Statement of Answer and Counterclaim was filed by Respondent Connor on December 31,

1996. Respondent Connor's Submission Agreement was signed on December 31, 1996.

A Statement of Answer and Counterclaim was filed by Respondent Carayannis on December 31, 1996. Respondent Carayannis' Submission Agreement was signed on December 24, 1996,

### HEARING INFORMATION

Hearing Dates/Sessions:	December 2, 1997	-	Two Sessions
	December 3, 1997	-	Two Sessions
	December 4, 1997	-	Two Sessions
	December 30, 1997	-	Three Sessions
	December 31, 1997	-	One Session
	January 13, 1998	-	One Session
	January 14, 1998	-	One Session
	January 15, 1998	-	One Session
	February 9, 1998	-	Two Sessions
	March 9, 1998	-	Two Sessions
	March 11, 1998	-	Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. and other locations in New York, New York.

### CASE SUMMARY

Claimant alleged that Respondents voluntarily entered into employment agreements with PSI on or about December 15, 1994. Claimant also alleged that, concurrent to their execution of their respective employment agreements, Respondents were each loaned the sum of \$512,750.00 in the form of promissory notes (the "Notes"). Claimant asserted that the Notes stated that Respondents were each obligated to repay \$512,750.00, plus interest at a rate of 7% per annum, in 31 equal monthly payments of \$16,540.32, plus interest, which was to be deducted from their net commission checks. Claimant further alleged that the Notes were amended, on or about May 17, 1995, reducing the monthly deductions from Respondents' net commission checks to 53 equal monthly payments of \$9,362.45, plus accrued interest of 7%.

Claimant asserted that the Notes provided that the loans would become immediately due and payable upon the termination of Respondents' employment with PSI. Claimant also asserted that, on or about September 30, 1996, Respondents were terminated for cause from PSI and the balance of \$357,258.49, which represented the unpaid portion of each of Respondents' loans, became due on that date. Claimant further asserted that Respondents failed and refused to honor their obligations to repay their loans.

Respondents asserted that, at all times while employed at PSI, they devoted all of their professional time to PSI's business. Respondents also asserted that at no time did they utilize their time and efforts toward any outside entity in violation of either Rule 40 of the NASD or in violation of Respondents' employment agreements.

Respondents alleged that their activities on behalf of PSI and Atlas Financiere with AtlasInvest Partners LP ("Atlas"), a firm which Respondents were helping to set up, were undertaken on behalf of PSI. Respondents also alleged that this was within the description of Respondents' duties and obligations while employed by PSI. Respondents further alleged that PSI's management mistakenly believed that Respondents' activities on behalf of Atlas were not for the benefit of PSI but for Respondents' own benefit. Respondents denied this allegation and asserted that their termination from PSI was without cause. Respondents contended that, therefore, they are not obligated to repay any portion of their transitional compensation to PSI. Respondents also denied that they misrepresented any facts to PSI prior to, or at the time of, their termination.

Respondents initiated a Counterclaim against Claimant for its defamatory statements made against Respondents' by certain of Claimant's employees after Respondents' termination from PSI. Additionally, Respondents asserted that PSI breached its fiduciary duty to Respondents in its dealings with them including terminating them in an unjustly and unprofessional manner designed to cause embarrassment and annoyance to them.

In response to the Counterclaim, Claimant alleged that Respondents were terminated for cause because PSI discovered that, instead of devoting their full time to working for PSI, they were actively involved in setting up another business, and were pursuing other business pursuits without the consent of PSI. Claimant also alleged that Respondents disregarded their obligations to PSI and devoted their time and attention to help in setting up Atlas. Claimant further alleged that, in working to formulate Atlas' business and, while employed by PSI, Respondents acted secretly as they used PSI's resources.

Claimant asserted that it, at all times, acted appropriately and with due care in its investigation and termination of Respondents for cause. Claimant further asserted that PSI and its employees did not make any false statements to anyone concerning Respondents, or the circumstances regarding their termination, and that the facts stated in Respondents' Forms U-5 are truthful and accurate.

#### **RELIEF REQUESTED**

Claimant requested the following relief against each Respondent:

1. The sum of \$357,258.49 based on Respondents' default in repayment of the Notes and their subsequent amendments;
2. Interest on the above referenced sum at the contract rate of 7% per annum from September 30, 1996 to the date of payment;
3. The cost of collection and of this proceeding, including reasonable attorneys' fees; and
4. Any other relief as the arbitrators deemed fit.

Respondents requested the following relief:

1. Dismissing Claimant's Statements of Claim against them;
2. The costs of this proceeding including reasonable attorneys' fees;
3. A judgement against Claimant on Respondents' counterclaim in an amount determined to be reasonable by the Panel but believed to be in excess of \$500,000.00; and
4. Such other relief as the Panel deemed fit.

Claimant requested that Respondents' Counterclaim be dismissed in its entirety.

#### **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 remains 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. Carayannis be and hereby is liable for and shall pay to Claimant the sum of \$357,258.49, plus interest at the rate of 7% per annum commencing September 30, 1996.
2. Connor be and hereby is liable for and shall pay to Claimant the sum of \$357,258.49, plus interest at the rate of 7% per annum commencing September 30, 1996.
3. Respondents' Counterclaims are hereby denied in their entirety.
4. Each party shall bear its respective costs including attorneys' fees.
5. All other requests for relief are hereby denied.

### FORUM FEES

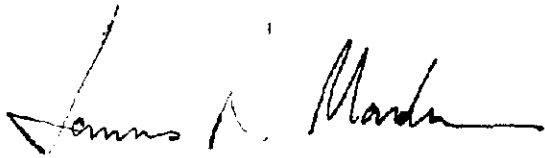
Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee and \$350.00 member surcharge previously submitted by Claimant and the \$500.00 non-refundable filing fee previously submitted by Respondents in their Counterclaim. In addition, the arbitrators have assessed the following forum fees:

19 Hearing sessions x \$1,000.00 = \$19,000.00

1. Respondent Connor be and hereby is liable for the sum of \$9,500.00, representing one-half of the total forum fees assessed. Connor previously deposited \$500.00 with NASD Regulation, Inc., therefore, Connor shall pay the balance of \$9,000.00.
2. Respondent Carayannis be and hereby is liable for the sum of \$9,500.00, representing one-half of the total forum fees assessed. Carayannis previously deposited \$500.00 with NASD Regulation, Inc., therefore, Carayannis shall pay the balance of \$9,000.00.

Fees are payable to NASD Regulation, Inc.

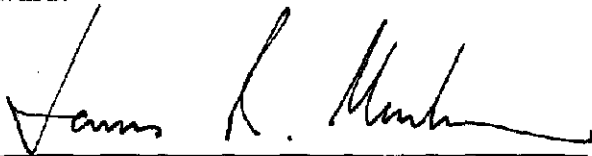
Arbitrators' Signatures

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James R. Madan  
Chairperson - Industry Arbitrator

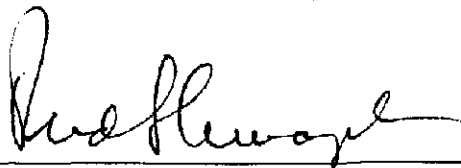
Date of decision: April 14, 1998

I, **James R. Madan**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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James R. Madan

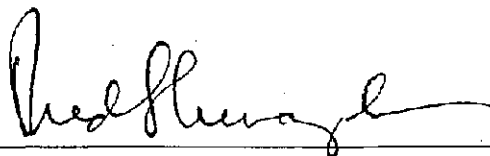
Arbitrators' Signatures

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Fred Shinagel  
Industry Arbitrator

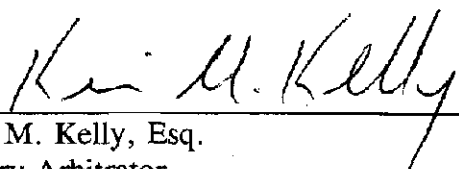
Date of decision: April 14, 1998

I, **Fred Shinagel**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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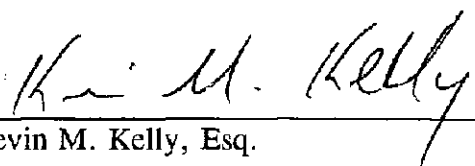
Fred Shinagel

Arbitrators' Signatures

  
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Kevin M. Kelly, Esq.  
Industry Arbitrator

Date of decision: April 14, 1998

I, **Kevin M. Kelly, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Kevin M. Kelly, Esq.