

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Michael A. Szczesny, MD :
Carol A. Szczesny :

Claimant :

vs. :

Prudential Securities :
Charles V. Austin :

Respondent :

**CASE #91-02099
AWARD**

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 9, 1991, Claimants Michael and Carol Szczesny, who appeared Pro Se, alleged that Respondents Prudential Securities and Charles V. Austin intentionally misinformed them of an FDA Advisory Report regarding a drug that was manufactured by XOMA. Claimants further alleged that this misinformation caused the Claimants to request the sale of their XOMA stock which caused a loss in profit to the Claimants.

Respondents, Prudential Securities and Charles V. Austin in a joint Statement of Answer, maintained that the information given to the Claimants was given in good faith without the intent to benefit at the expense of their investors. Respondents further maintained that while it recommended the XOMA stock be sold, it was the Claimant's responsibility to accept or reject this advice and that such recommendations could not be considered a guarantee. Respondents further maintained that the Claimant's loss calculations were inaccurate since the highest price of the stock is used to calculate losses and the Claimants should not be allowed to chose his selling price arbitrarily.

RELIEF REQUESTED

Claimants, Michael and Carol Szczesny, requested \$8,517.51 in actual damages, \$1,000.00 in punitive damages and interest.

Respondents, Prudential Securities and Charles V. Austin, requested the claims of the Claimants be dismissed.

AWARD

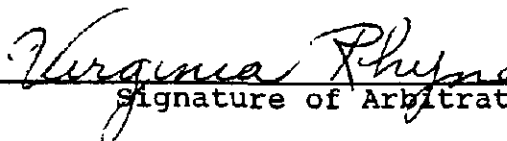
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Virginia Rhyne, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 1, 1991 and by the Respondent Prudential Securities on September 3, 1991 and not by Respondent Charles V. Austin as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Michael & Carol Szczesny against Respondents Prudential Securities and Charles V. Austin are dismissed.
2. The Claimant's request for punitive damages are denied.
3. The Claimant's request for interest is denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **VIRGINIA RHYNE**, 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

DATE OF DECISION: January 21, 1992