

## **NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Addie Patzke Duke & Wilbur Davidson,  
Trustees of the Estate of Walter H. Wyeth

and

92-03440

**Name of Respondents**

Prudential Securities, Inc.. and  
David R. Hester

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### **REPRESENTATION OF PARTIES**

Addie Patzke Duke & Wilbur Davidson, Trustees of the Estate of Walter H. Wyeth ("Claimants") were represented by Ralph J. Sirlin, Esq., of Reosti and Sirlin, P.C., Detroit, Michigan.

Prudential Securities, Inc.. and David R. Hester ("Respondents") were represented by Bradley J. Schram, Esq., Miles D. Hart, Esq. and Steve J. Weiss, Esq. of Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about October 9, 1992. Submission Agreement of Claimants was signed on October 30, 1992. Motion to Dismiss Respondents' Motion to Dismiss is dated April 12, 1993.

Respondents' Motion to Dismiss, Request for Immediate Prehearing Conference, and Response to the Statement of Claim was filed by Respondents on or about March 19, 1993. Submission Agreement of Respondent Prudential Securities, Inc.. was signed on April 8, 1993 by William F. Tueting. Submission Agreement of Respondent David R. Hester was signed on April 23, 1993.

### **HEARING INFORMATION**

The hearing was held on Tuesday, March 29, 1994 for two (2) sessions and Wednesday, March 30, 1994 for two (2) sessions in Southfield, Michigan for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that as a result of solicitation by Respondent Hester and other communications between Davidson and Hester, an account was opened at Thompson McKinnon (later acquired by Respondent Prudential). Claimants alleged that Claimant Davidson desired that the account be managed by an independent financial advisor; that Respondent Hester understood that objective and stated that he would comply with it; and within a short period of time a substantial portion of the account portfolio had been sold off and new positions were taken. Specifically, Claimant alleged that Respondents failed to advise them of the failure to employ an independent investment advisor, and that several of the positions in the account were inappropriate for the account's investment objectives. These allegations constitute violations of the NASD Rules of Fair Practice, New York Stock Exchange rules, fraud, breach of fiduciary duty, and violation of State and Federal securities laws.

Respondents stated that Davidson was an experienced investor who sought alternatives to the utility stocks. Davidson clearly authorized and ratified every transaction and was actively involved in all account decisions. Respondents further stated that the Claimants, as trustees, owed a fiduciary responsibility to the Trust to make sure that the investments were prudent and met the objectives of the Trust.

### **RELIEF REQUESTED**

Claimants requested an award of their out-of-pocket loss and lost profits believed to be in excess of One Hundred Thousand Dollars (\$100,000); interest at the rate of 12%; costs; actual attorneys fees as allowed by the Panel in an amount to be determined by the Panel; and rescission of all transactions and payment of all monies necessary to make Claimants whole.

Respondents requested that the claims asserted in this matter be dismissed and that the arbitrators award them all costs and attorneys fees for the defense of this frivolous claim.

### **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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and fees (including but not limited to attorneys' fees and expert witness fees) incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference session, if any. There were 4 sessions x \$500 = \$2,000 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure 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 §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant.. Respondents shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500 as additional forum fees.

The NASD shall retain postponement fees in the amount of \$500 previously deposited with the NASD by the Claimants. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Barry Goldman, Esq.  
Barry Goldman, Esq.  
Public Arbitrator, Presiding Chair

May 2, 1994

s/ A. Robert Bliven  
A. Robert Bliven  
Public Arbitrator

April 29, 1994

s/ Rose C. Ruble  
Rose C. Ruble  
Industry Arbitrator

May 3, 1994

*Served 7/26/94*