

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Robert and Jeannette Kotowski

93-00367

Name of Respondents

Prudential-Bache Securities Inc.  
Jerome Gendron  
Michael Durdil

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REPRESENTATION

For Claimants, Robert and Jeanette Kotowski, at the hearing: Scott Goldsher, Esq. of Goldsher and Goldsher, Chicago, Illinois.

For Respondents, Prudential Securities, Inc., Jerome Gendron, and Michael Durdil, at the hearing: Christopher Mone, Esq. of Prudential Securities Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: February 2, 1993. Claimant's Submission Agreements signed on: January 28, 1993.

Joint Statement of Answer filed by Respondents, Prudential Securities, Jerome Gendron, and Michael Durdil, on May 19, 1993.

Respondent, Prudential Securities, Inc.'s Submission Agreement signed on: May 14, 1993. Respondents, Jerome Gendron and Michael Durdil did not file Submission Agreements with the NASD but stipulated on the record to submitting to arbitration.

### HEARING INFORMATION

Hearing Date: October 14, 1993 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimants Robert and Jeannette Kotowski ("Claimants") alleged that Respondents Prudential Securities ("Prudential"), Jerome Gendron ("Gendron") and Michael Durdil ("Durdil") violated federal and state securities laws and breached fiduciary duties owed to claimants. More specifically, claimants alleged that Gendron convinced claimants to purchase 500 shares of Centocor Inc. and to sell five February 55 calls of Centocor Inc. and that these transactions were made prior to claimants filling out any options agreement forms with Prudential. Claimants also alleged that they told Gendron of their aversion to risky investments and relied on Gendron's representations in purchasing Centocor, Inc.

Respondents Prudential, Gendron, and Durdil (or collectively "Respondents") alleged that claimants selected Centocor as the stock to purchase. Respondents alleged that Gendron at no time represented to claimants that stock purchased in a covered call writing program was in any way safer or less risky than were the stocks simply purchased without covered calls. Respondents further alleged that the fact that the stock did not perform well is due to the actions of Centocor itself.

### RELIEF REQUESTED

Claimants requested actual damages in the sum of \$22,011.00, interest, costs, attorney's fees, punitive damages in the sum of \$75,000.00, and such other relief as the arbitrators deem fair and equitable.

Respondents requested that the Statement of Claim 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 originals remain on file with the NASD.

At the hearing, Respondents filed a Motion to Dismiss the Statement of Claim pursuant to Section 12 of the NASD Code of Arbitration Procedure. Argument was heard and the panel denied the motion.

### 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. Claimant's Statement of Claim as against Jerome Gendron only is denied and dismissed;
2. Respondents Prudential Securities, Inc. and Michael Durdil shall be and hereby are jointly and severally liable for and shall pay to the claimants the sum of Seven Thousand Five Hundred Dollars (\$7,500.00);
3. Claimants' request for interest is denied;
4. Claimant's request for punitive damages is denied;
5. Each of the parties shall pay their own costs and expenses, including attorney's fees, other than those specifically enumerated for herein.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions x \$500.00 = \$1,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$500.00 are assessed against Respondent Prudential Securities Inc. only.

Additional Fees are payable to the National Association of Securities  
Dealers, Inc.

By the Arbitration Panel:

Dated:

October 25, 1993

October 25, 1993

October 28, 1993

Date of Service by the NASD: November 2, 1993