

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Michael T. Burke and Susan Bowling

Susan Bowling cust. for Cheresse Burke

Susan Bowling cust. for Elizabeth R. Burke

CONSOLIDATED AWARD

~~95-00048~~

95-00049

95-00050

Name of Respondent(s)

Prudential Securities Inc.

James Cronin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 3, 1995 Claimants Michael T. Burke and Susan Bowling, et al., who appeared Pro Se in this consolidated matter, alleged that Respondent James Cronin, through the Respondent firm, Prudential Securities Inc., failed to follow their instructions to sell their shares of Cytogen Stock if the stock fell to \$25.00 per share. The Claimants contended that they took no action at that time, but instructed the Respondents to sell the stock if it fell to \$10.00. The Claimants further contended that this instruction was not followed either, and that when they finally sold the shares the stock had fallen to \$3.125, causing a loss for which the Respondents should be held liable.

Respondents Prudential Securities Inc. and James Cronin, through their representative and in-house counsel, Christopher Freeze, Esq., maintained that the Claimants did not at any time instruct Respondent Cronin to sell or enter a stop loss order on the Cytogen stock, and further that the filing of this claim is an attempt to force Respondents to assume the loss the Claimants sustained as a result of their conscious decision to hold rather than sell their positions in Cytogen Corp. The Respondents contended that the losses were not caused by any wrongdoing by them, and therefore, they should not be held liable in this matter.

In a reply to the Answer, Claimants refuted the defenses of the Respondents and reiterated that they are entitled to recover damages from the Respondents.

RELIEF REQUESTED

Claimants Michael T. Burke and Susan Bowling requested \$9,750.00 in actual damages.

Claimants Susan Bowling custodian for Cheresse Burke requested \$5,140.65 in actual damages.

Claimant Susan Bowling custodian for Elizabeth Burke requested \$2,984.25 in actual damages.

Respondents Prudential Securities Inc. and James Cronin requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, H. Victor Schwimmer, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on December 28, 1994, by Respondent James Cronin on November 21, 1995 and by Respondent Prudential Securities Inc. on November 27, 1995.

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 T. Burke and Susan Bowling, Susan Bowling custodian for Cheresse Bowling and Susan Bowling custodian for Elizabeth Burke, against Respondents Prudential Securities Inc. and James Cronin are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 (95-00048), \$150.00 (95-00049), and \$125.00 (95-00050) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

_____ , do hereby affirm upon my oath as arbitrator that I am the individual described
in this instrument, which is my oath and award.



H. Victor Schwimmer

ON: January 31, 1996

, Inc. on January 3, 1995
ed that Respondents RAF
old 100 shares of National
n account 57-40002265 in
ad opened the account by
st any further action with
AFFC issued him a check
ted replacement of the 100
ed to replace the stock, and
lents should be held liable.

d in-house counsel, Russell
e fee charged by it against
: letters to all of its inactive
ent contended that inactive
which a fee is assessed.
nt policy guidelines which
of the first year and \$75.00
to any charges incurred in
the above, it should not be