

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Richard D. Rubin, M.D.

vs.

Case#

90-03106

Name of Respondents

Victor Wegard  
Louis Arbrmovitz

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**REPRESENTATION**

Claimant Richard D. Rubin, MD. ("Claimant"), Mary Ann Stokes, Esq. and Peter S. Pearlman, Esq. from the law firm of Cohn Liffand Pearlman Hermann & Knopf.

For Respondent L. C. Wegard & Co., ("L.C. Wegard"), Lawrence J. Toscano, Esq. from the law firm of Heller, Horowitz and Feit, P.C.

For Respondent Victor L. Wegard ("Wegard"), Michael C. Simon, Esq. from the law firm of Hochman & Simon.

Louis Abramovitz ("Abramovitz") was represented by counsel Bill Singer, Esq. from the law firm of Rosenberg, Singer, Sayid and DiBartolo. Mr. Singer withdrew and Abramovitz did not retain new counsel.

**CASE INFORMATION**

Statement of Claim was filed on November 1, 1990.

Claimant's Submission Agreement signed on: September 20, 1990.

Joint Statement of Answer filed by L.C. Wegard and Wegard on January 15, 1991.

L.C. Wegard's Submission Agreement was signed on January 15, 1991.

Wegard's Submission Agreement was signed on January 15, 1991.

Abramovitz's Statement of Answer was filed on January 28, 1991.

Abramovitz's Submission Agreement was signed on January 23, 1991.

### HEARING INFORMATION

Hearing Dates/Sessions:	January 20, 1993	-	1 session
	March 3, 1993	-	2 sessions
	May 6, 1993	-	2 sessions
	June 2, 1993	-	2 sessions
	June 16, 1993	-	2 sessions
	June 21, 1993	-	2 sessions
	June 23, 1993	-	2 sessions
	August 25, 1993	-	2 sessions
	September 20, 1993	-	2 sessions

Hearing Location: NASD offices located in New York, New York.

### CASE SUMMARY

Claimant alleges that in or about March, 1986, he met with Wegard, a principal officer and director of L.C. Wegard, and Wegard recommended that he purchase U.S. Video for his personal account. Claimant alleges that when he had exhausted his personal funds, he used the funds belonging to the pension plan to purchase additional U.S. Video stock at the suggestion of Wegard who stated that U.S. Video was suitable for pension plans.

Claimant also alleges that on the recommendation and urging of Wegard and Abramovitz, ninety percent of the funds in the Pension Plan were entirely invested in speculative and enormously risky securities such as U.S. Video, Private Brands, Harvard Knits, and Tech Knits. Claimant alleges that the recommended securities and the concentration of securities were unsuitable for the Pension Plan account.

Claimant contends that Respondents' activities were in violation of Sections 404(a)(B) and (C) of Employment Retirement Income Security Act (ERISA). Claimant alleges that Respondents misrepresented that the companies were suitable and were not extremely risky. Claimants also allege that the Respondents manipulated and maintained the prices of the speculative securities at an artificially high level. Claimant also alleges that Respondents' actions constitute common law fraud, or violation of 15 U.S.C. 78J(b) and Rule 10b-5 of the Securities Exchange Commission promulgated thereunder and the Investment Advisors Act.

Respondents L.C. Wegard and Wegard, deny each and every allegation. Said Respondents state that Claimant was introduced to Wegard by U.S. Video counsel and that Claimant wanted to purchase 10,000 to 20,000 shares but was only sold 2,000 shares. Said Respondents allege that Rubin on the opening account form stated that he had \$125,000 in net worth and amounts, twenty-five years of investment experience in stocks and bonds and listed his investment objective as speculative. Said Respondents contend that they did not solicit the purchase of U.S.

Video. Respondents state that by September, 1986, Claimant had began to invest in options and when Wegard told Rubin that he would not write options on new issues, Claimant began to look for another firm that would write the options. Said Respondents contend that Dr. Rubin and the Pension Plan maintained accounts at other firms and invested in speculative issues.

Respondents, L.C. Wegard and Wegard, maintain that Claimant was a sophisticated investor who reviewed each prospectus before purchasing a new issue and visited the presidents of companies in which he owned stocks. With respect to the Pension Plan account, said Respondents maintain that they did not push Claimant into purchasing the securities. Respondents contend that Claimant's friend Frank Cohen, offered legal services to the companies and that Cohen also held some of these shares.

Said Respondents argue that they were not market makers and therefore could not have manipulated any of the issues complained of by Claimant.

Respondent Abramovitz denies the allegations of wrongdoing and denies liability. Abramovitz contends that he did not make any recommendations concerning U.S. Video. Abramovitz states that Rubin placed on unsolicited order to purchase 4,500 U.S. Video. In May, 1986 and June, 1986 Rubin purchased 2,500 shares and then sold them at profit in July, 1986. Abramovitz alleges that Rubin wanted to purchase additional shares of U.S. Video in August and when Abramovitz advised him that he was accumulating too much of the stock, Rubin purchased the stock for his daughter's and wife's accounts, at another brokerage firm. Abramovitz further alleges that he consistently advised Rubin to diversify the account, but Rubin refused to do so because he could not buy in large quantities and the profits were not substantial. Abramovitz also states that when Private Brands went public, Rubin wanted to purchase a large quantity and when this was refused, he purchased 10,000 shares at \$60,000 for his wife's account. Abramovitz also states that Claimant could have made a profit by selling Private Brands but declined to do so because Cohen was not selling his stocks.

#### **RELIEF REQUESTED**

Claimant requests \$441,000 for losses sustained, punitive damages in the range of \$3,500,000 to \$4,500,000 and attorney's fees under 29 U.S.C. Section 1132.

Respondents request that the claims be dismissed. L.C. Wegard and Wegard request an award of attorney's fees and costs while Abramovitz requests compensation for costs incurred and punitive damages for mental stress and aggravation upon him and his spouse by these false charges.

**OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the appointment of this panel, there was a previous panel which met with the parties on July 1, 1992 and conducted one hearing session. The parties are assessed forum fees for this session as stated in the forum fees section of this decision.

Prior to the conclusion of this matter Claimant advised the panel that it had settled his claims with L.C. Wegard and Co.

On May 7, 1993, Respondent Wegard moved to have the attorneys for the Claimant disqualified on the basis that they may have to be called to testify as to the custody of taped evidence. This Panel reserved decision. This motion was renewed on 6/2/93 and decision was reserved by this Panel. On 9/20/93 this Panel denied this Motion.

On June 16, 1993 Wegard Moved to Dismiss the case at end of claimant's case. This Panel reserved decision and then denied the motion on September 20, 1993.

**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. All claims asserted by Claimant against Respondents are denied in their entirety.
2. All other claims for relief are denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed against Victor L. Wegard:

Non-refundable Filing Fee:	\$250.00
Hearing Session Fees:	\$1000.00 x 16 sessions = \$16,000.00

1. Claimant is assessed \$105.00 for costs of reproduction of tapes. Claimant deposited \$1,250.00 and entitled to a refund of \$1,145.00.
2. L.C. Wegard & Co., Inc. previously deposited \$1,750.00. Said Respondent is assessed a \$1,000.00 fee for postponement of the July 30, 1991 hearing. L.C. Wegard is, therefore, entitled to refund in the amount of \$750.00.

3. Victor L. Wegard is further assessed a \$1,000.00 fee for postponement of the hearing that was scheduled for July 2, 1992.

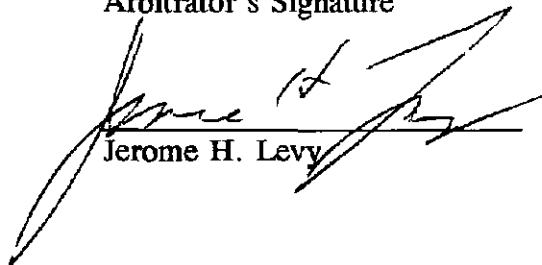
4. Victor L. Wegard shall satisfy the fees assessed by reimbursing Claimant \$1,145.00, L.C. Wegard \$750.00 and by remitting the balance, \$14,355.00 to the NASD.

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

**ARBITRATION PANEL**

David Finnegan, Esq.	-	Public Chairperson
Herbert Seigel, Esq.	-	Public Panelist
Jerome H. Levy	-	Industry Panelist

Arbitrator's Signature

  
Jerome H. Levy

Date of Decision: January 11, 1994

STATE OF NEW YORK  
COUNTY OF *NY*

*NY*  
S.S.:


On this 16 day of November, 1993, before me personally appeared Jerome H. Levy known to me to be the individual described in and who executed the foregoing instrument and be dully acknowledged to me that he executed the same.



MARTIN J. KING  
Notary Public, State of New York  
No. 41-4690-005  
Qualified in Queens Co.  
Certified in New York County  
Commission Expires 12-10-95

Page 6  
Case #90-03106

Arbitrator's Signature

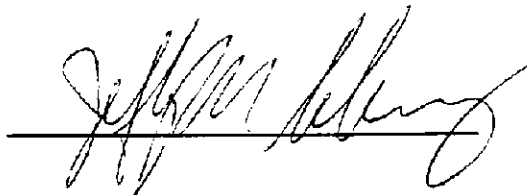
  
Herbert Siegel, Esq.

Date of Decision: January 11, 1994

STATE OF NEW YORK  
COUNTY OF *NASSAU*

S.S.:

On this *18th* day of November, 1993, before me personally appeared Herbert Siegel known to me to be the individual described in and who executed the foregoing instrument and be dully acknowledged to me that he executed the same.



JEFFREY M. SCHWARTZ  
Notary Public, State of New York  
No. 30-4664097  
Qualified in Nassau County  
Commission Expires October 30, 19*95*