

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Brian and Barbette Niles

92-02402

Name of Respondents

S.D. Cohn & Co., Inc.  
Wertheim Schroder & Co., Inc.  
H. August Perotti  
Michael F. Dura  
Charles Sullivan  
Lewco Securities  
Wertheim Schroder Holdings

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 21, 1992. Claimants Brian and Barbette Niles, who appeared Pro Se, alleged that Respondent H. August Perotti, an Account Executive with Respondent S.D. Cohn & Co., Inc., solicited them to purchase a large block of Biospecifics stock that was about to split. Claimants further alleged that eventually they purchased 60 shares of Biospecifics at \$26.00; however Respondent H. August Perotti tried to convince Claimants to purchase more stocks. Claimants contended that a few days later they received the confirmation for their stock purchase which indicated a purchase of 100 shares of Biospecifics, instead of the authorized 60 shares. Claimants further contended that Respondents Wertheim Schroder & Co., Inc., Wertheim Schroder Holdings, Lewco Securities, Michael F. Dura and Charles Sullivan acted outside their authority and after numerous requests Respondents did not provide Claimants with a corrected confirmation of their stock purchase; and subsequently, without Claimants' authorization, Respondents sold the stock. Claimants asserted that Respondent H. August Perotti asked Claimants to participate in a sale of excess shares which were not authorized, and because of Respondents actions Claimants incurred a financial loss.

Respondents S.D. Cohn & Co., Inc., H. August Perotti, and Charles Sullivan by and through their counsel, Charles M. O'Rourke, Esq., Sole Practitioner, Hempstead, New York,

maintained that Claimants Brian D. and Barbette Niles received a sell-out notice dated April 16, 1992 and paid for the purchase of 60 shares, whereby the check was received 7 days after settlement date. Respondents further maintained that in Claimants' own document submissions, Claimants admit they breached their contract of purchase and standard industry settlement procedures and Federal Regulations. Respondents further maintained that without admitting or denying who was right or wrong, Respondent S.D. Cohn & Co. undertook to sellout the original 100 shares and reinstate their 60 shares (now 120 shares after the 2 for 1 split) to accommodate the customer, even though Claimants had not paid for their stock on time.

Respondents Wertheim Schroder & Co., Inc., Michael F. Dura, Lewco Securities and Wertheim Schroder Holdings, Inc., by and through their in-house counsel Dennis Cronin, Esq., maintained that no claim has been asserted against them, for neither Respondents Wertheim Schroder & Co., Inc. nor Wertheim Schroder Holdings, Inc. nor Lewco Securities is the "parent company" of Respondent S.D. Cohn & Co., Inc. and these entities have no control over the latter's operations, therefore, Respondents Wertheim Schroder & Co., Inc., Wertheim Schroder Holdings, Inc., Michael E. Dura and Lewco Securities should be dismissed.

### **RELIEF REQUESTED**

Claimants Brian D. and Barbette Niles requested \$2,029.84 in actual damages.

Respondents S.D. Cohn & Co., Inc., H. August Perotti and Charles Sullivan requested the claim be dismissed in it's entirety.

Respondents Wertheim Schroder & Co., Inc., Michael F. Dura, Lewco Securities and Wertheim Schroder Holdings requested the claim be dismissed.

### **AWARD**

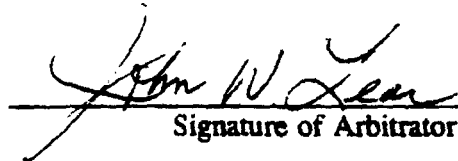
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John W. Lear, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 13, 1992, by the Respondents S.D. Cohn & Co., Inc., H. August Perotti and Charles Sullivan on October 7, 1992, by the Respondents Wertheim Schroder & Co., Inc., Lewco Securities and Wertheim Schroder Holdings on September 15, 1992 and by the Respondent Michael F. Dura on November 18, 1992.

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. Respondent S.D. Cohn & Co., Inc. is liable and shall pay to the Claimants Brian D. and Barbette Niles the sum of \$1,000.00 in damages.
2. Respondent H. August Perotti is liable and shall pay to the Claimants Brian D. and Barbette Niles the sum of \$570.00 in damages.
3. The claims of Claimants Brian D. and Barbette Niles against Respondents Wertheim Schroder & Co., Inc., Michael F. Dura, Charles Sullivan, Lewco Securities and Wertheim Schroder Holdings are dismissed.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Brian D. and Barbette Niles shall be retained by the NASD, Inc. Respondents S.D. Cohn & Co., Inc. and H. August Perotti are jointly and severally liable and shall pay to the Claimants the sum of \$50.00 as reimbursement.

**AFFIRMATION**

I, JOHN W. LEAR, 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.

  
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Signature of Arbitrator

DATE OF DECISION: March 16, 1993