

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Warner C. Lusardi

vs.

NASD #92-02583

Name of Respondent

Randy Schroeder

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REPRESENTATION

For Claimant: James A. Testa, Esq. of Testa & Grady, Vista, California

For Respondent: Roland C. Colton, Esq. of Colton & Fuller, Del Mar, California

CASE INFORMATION

Statement of Claim filed: August 4, 1992

Claimant's Submission Agreement signed: May 19, 1992

Statement of Answer filed by Respondents on: Not filed.

Respondent's Submission Agreement signed on: Respondent Schroeder did not file a Submission Agreement, or an Answer but appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: July 14, 1993 (two sessions)

Hearing Location: San Diego, California

### **CASE SUMMARY**

Claimant alleged: On or about January 18, 1989, Respondent falsely and fraudulently represented to Claimant that the common stock of Enercell Corporation was appropriate for a conservative investment. In approximately February of 1990, Claimant discovered that the representations made by Respondent were false as it was a speculative investment.

In reliance on Respondent's representations, Claimant purchased 5000 shares of Enercell at \$9.125/share and an additional 5,000 shares at \$9.00/share.

No Answer was filed by the Respondent.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages of \$90,625;
2. Punitive damages;
3. Costs;
4. Attorney's fees;
5. Such further relief as the panel may deem appropriate.

### **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.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$20,000 inclusive of interest.

2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs, including attorney's fees.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the parties are assessed forum fees as follows:

Total forum fees		
2 sessions @ \$500/session	=	\$ 1,000.00
Claimant's one-half share	=	500.00
Credit for deposit	=	\$ <u>500.00</u>
Total Balance	=	\$ 0.00
 Respondent's one-half share	=	 \$ 500.00

Fees are payable to the National Association of Securities Dealers,

#### ARBITRATION PANEL

<u>Name</u>	<u>Public/Industry</u>
Harvey C. Flodin, Esq.	Public Arbitrator
James H. Bowersox	Public Arbitrator
Richard G. Brand	Industry Arbitrator

Concurring Arbitrators' Signature



Harvey C. Flodin, Esq.

DATE SERVED: 08/12/93

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James H. Bowersox

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Richard G. Brand

Date of Decision: 1/27/93