

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Reginald and Katherine Woods

93-00543

Name of Respondents

Reich & Co., Inc.  
Arthur H. Goldberg  
Gary B. Davis  
Steven Freifeld  
Scott Novack

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 12, 1993, Claimants Reginald and Katherine Woods, who appeared Pro Se, alleged that on November 14, 1991 Claimant Reginald Woods received an unsolicited telephone call from Respondent Scott Novack, Account Representative at Respondent Reich & Co., Inc. to tell Claimants about the exciting potential of Drug Screening Systems, Inc. ("DRUG") at which time, Claimant Reginald Woods told Respondent Scott Novack that Claimants never purchase securities over the phone, but they would be willing to consider any research material Respondent Scott Novack would care to mail to them, whereby Respondent Scott Novack offered to fax the research material. Claimants further alleged that on the basis of Respondent Reich & Co., Inc. research reports, Claimants purchased 2,000 shares of DRUG on November 21, 1991 at a net price of \$6 1/16 for a total basis of \$12,128.00 and on that same day, DRUG traded a total of 29,700 shares with a high of \$5 7/8, a low of \$5 5/8, and a close of \$5 3/4. Claimants contended that in December, Respondent Scott Novack mailed them another Respondent Reich & Co., Inc. research report dated December 12, 1991, presenting the same general story as the report previously sent on November 14, 1991, and on which Claimants relied solely in their decision to purchase DRUG, whereby the report reinforced Claimants determination to hold DRUG for the long-term. Claimants further contended that the stock price performed very well through April 1992, but began to drift down and finally broke through \$3 in August, 1992, whereby Claimants talked to Respondent Scott Novack a few times during this period, whereby, Respondent Scott Novack ascribed the price weakening to delays in the FDA approval of new

DRUG products and general market conditions. Claimants asserted that they became even more concerned as the price continued to fall, whereby Claimants finally called DRUG directly to request their Form 10-K and 10-Q reports which Respondent Reich & Co., Inc. claimed they never received said reports, at which time, Claimants were shocked to see that the Form 10-K report for June 30, 1991 included an opinion of Deloitte & Touche citing ".....substantial doubt about the company's ability to continue as a going concern". Claimants further asserted that it is clear that Respondent Reich & Co., Inc. research reports of November and December, 1991 used by them to promote the sale of DRUG were published long after DRUG filed its Form 10-K on September 30, 1991 and that if Claimants had received the Form 10-K report from DRUG, they would never have knowingly purchased any stock with a "going concern" qualification. Claimants argued that it is clear that the failure of the Respondents to disclose the very material fact that DRUG received a "going concern" qualification from its auditors could not have been inadvertent. Claimants further alleged that on December 18, 1992 they mailed a letter to Respondent Arthur H. Goldberg noting the failure of Respondent Reich & Co., Inc. to disclose the qualified opinion in its research report upon which Claimants relied, whereby they asked to restitution of the loss they suffered. Claimants further contended that on January 29, 1993, they received a telephone call from Respondent Reich & Co., Inc. by and through Dean Julia, who recommended that they sell position in DRUG and purchase an IPO that they were sponsoring, at which time, Respondent Reich & Co., Inc. failed to respond to their letter whereby Claimants decided to sell the entire DRUG position, for a net proceed of \$2,447.00 which fixed their loss on DRUG at \$9,681.00. Claimants further asserted that on February 3, 1993 they received a response from Respondent Reich & Co., Inc. which completely ignored the issue of their fraudulent concealment of DRUG's true financial condition and refused restitution. Claimants further alleged that it is clear that Respondent Reich & Co., Inc. and the author of the reports, Respondent Gary B. Davis knew of the qualified opinion on DRUG. Claimants further argued that Respondents knew of the "going concern" qualification, knew or should have known it was material to a reasonable investment decision and ignored its duty to disclose such a material fact, thus they are liable for Claimants' losses.

Respondents Reich & Co., Inc., Arthur H. Goldberg, Gary B. Davis, Steven Freifeld and Scott Novack, by and through their counsel Charles P. Axelrod, Esq., of Goldstein, Axelrod & DiGioia, New York, NY, maintained that Claimant Reginald Woods is a knowledgeable, well seasoned investor who willingly self-described himself as having sometimes invested in early stage companies such as Drug Screening Systems, Inc. ("Drug") and a disclosed on Claimants Reginald and Katherine Woods new account form, Claimants have been investing in excess of 10 years, have an annual income in excess of \$200,000, a net worth of \$2 million, and had as an expressed objective, "speculation". Respondents further maintained that Claimants are simply complaining that their purchase of Drug did not appreciate and that they ultimately sold all of their 2,000 share at a loss of \$9,681.00, for which they now seek that amount of damages. Respondents contended that obviously realizing that one is not entitled to recover because a stock declines in price because of the risks and vicissitudes of the market, Claimants have seized upon

an obscure and irrelevant issue that a research report of Respondent Reich & Co., Inc., upon which they claim to have relied in making their purchase, did not disclose that Drug had a qualified going concern. Respondents further contended that it is with this hindsight that Claimants now claim that had they known this information, they would not have effected their purchase. Respondents asserted that none of the material which Claimants alleged to have received in November, 1991 was prepared by Respondent Reich & Co., Inc. whereby the research report Claimants refer to was prepared by Commonwealth Associates and the Claimants concede that the Reich report, dated December 12, 1991, was received by them in December, thus, could not have properly been relied upon by Claimants in effecting the purchase made on November 14, 1991. Respondents further asserted that the very first page of the Commonwealth Associates Report states that Drug is "a development stage company", whereby no implication is made in the report that Drug was a seasoned company, and as a matter of fact, the phrase "development stage company" clearly puts Claimants on notice of Drug's circumstances. Respondents argued that the Statement of Claim fails to state any set of facts upon which relief may be granted, thus the claim should be dismissed.

Respondents further asserted a Request for a Hearing in this matter.

#### **RELIEF REQUESTED**

Claimants Reginald and Katherine Woods requested \$9,681.00 in actual damages and Punitive damages, if any, determined to be fair by the arbitrator.

Respondents Reich & Co., Inc., Arthur H. Goldberg, Gary B. Davis, Steven Freifeld and Scott Novack requested the claim be dismissed in its entirety.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc L. Ripp, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 9, 1993, by the Respondent Arthur H. Goldberg on May 5, 1993 and by the Respondents Reich & Co., Inc., Gary B. Davis, Steven Freifeld and Scott Novack on May 4, 1993.

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 Respondents' request for a Hearing is denied.

2. The Claimants' Motion to Compel is hereby denied.
3. The claim of Claimants Reginald and Katherine Woods against Respondents Reich & Co., Inc., Arthur H. Goldberg, Gary B. Davis, Steven Freifeld and Scott Novack is dismissed.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Reginald and Katherine Woods shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **MARC L. RIPP, ESQ.**, 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.

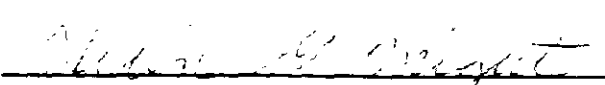
  
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Marc L. Ripp, Esq.

DATE OF DECISION: August 13, 1993

STATE OF: NEW JERSEY  
ss:

COUNTY OF: ESSEX

On this 5<sup>th</sup> day of August 1993, before me personally appeared Marc L. Ripp, Esq., to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
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HELEN G. MIGUT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 4, 1998