

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jan Arnett

93-00914

Name of Respondents

Commonwealth Associates
James Giordano

REPRESENTATION

For Claimant Jan Arnett ("Claimant") appeared Evan L. Gordon, Esq., New York, New York.

For Respondent Commonwealth Associates ("Commonwealth") appeared David S. Richan, Esq. from the law firm of Tenzer, Greenblatt, Fallon & Kaplan, New York, New York.

For Respondent James Giordano ("Giordano") appeared Martin E. Karlinsky, Esq. from the law firm of Camhy Karlinsky & Stein, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on March 9, 1993.

Claimant's Submission Agreement was signed on February 27, 1993.

A Statement of Answer was filed by Respondent Commonwealth Associates on August 3, 1993. Respondent Commonwealth Associates Submission Agreement was signed on August 3, 1993.

A Statement of Answer, Counterclaim and Cross-Claim was filed by Respondent Giordano on August 10, 1993. Respondent Giordano's Submission Agreement was signed on August 10, 1993.

HEARING INFORMATION

Pre-Hearing Conference: May 19, 1994 - One Session

Hearing Date(s)/Sessions:	March 1, 1995	-	Two Sessions
	March 2, 1995	-	Two Sessions
	May 25, 1995	-	Two Sessions

The hearings were held at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant Jan Arnett alleged that he opened an account with Respondent Giordano at Commonwealth Associates, after Respondent Giordano moved to that firm from another firm. Claimant also alleged that through a series of significant misrepresentations, Respondent Giordano induced him to invest in speculative over-the-counter securities such as Hemodynamics, Today Home Entertainment, UTS TSS, Conquest Airlines, Protech, Sulcus Computer Corporation, Medical Nutrition Company, and Mizlou Communications, which were new issues sponsored by Commonwealth or securities in which commonwealth made a market. Claimant further alleged that Respondents dissuaded him from selling some of these securities when he expressed a desire to do so, convinced him to authorized trades to support the underwriting and market making activities of Commonwealth, and failed to disclose material information with respect to certain recommended investments.

It was alleged by the Claimant that the conduct engaged in by the respondents caused claimant to lose \$548,680.75.

Respondent Commonwealth denied all of the material allegations set forth in the Statement of Claim and denied any wrongdoing of any kind on its part.

Respondent Commonwealth maintained that the securities identified in the Statement of Claim were properly registered under all applicable state and federal regulations and that, upon information and belief, Respondent Giordano was also properly registered under all applicable state and federal regulations with respect to all transactions in these securities. Further, Commonwealth maintained that Giordano did not serve as chief executive officer or in any other management capacity at Commonwealth, and was properly supervised at all times.

It was also maintained by Respondent Commonwealth that Claimant Arnett was at all relevant times a sophisticated investor in speculative securities and had full access to all available information, including prospectuses, private placement memoranda and other public documents.

As affirmative defenses Respondent Commonwealth asserted that Claimant's claims are barred by the applicable statute of limitations; are barred by the doctrine of laches; failed to state any facts with specificity that support his allegations of misrepresentation; and failed to state grounds upon which relief may be granted.

Respondent Giordano denied all allegations of wrongdoing asserted against him. Respondent Giordano maintained that claimant was a wealthy, sophisticated, investor who had been a

customer of his for several years and who made his own investment decisions. Further, Respondent maintained that none of the investments complained of by the claimant were unsuitable in view of claimant's background, wealth, sophistications, and other investment experience.

Respondent Giordano further maintained that at the time of the transactions which are the subject of this dispute, he was employed by Commonwealth and carried out the directions of his employer honestly and without deviation.

As for a counterclaim Respondent Giordano asserted that claimant has interfered with his ability to earn a living, led, in part, to his leaving Commonwealth in 1992, has interfered with his right to be registered in certain states, and impeded the realization of the value of his holdings in commonwealth.

As for a cross-claim Respondent Giordano asserted that he is entitled to indemnification and contribution from Commonwealth Associates to the extent that Giordano is charged with wrongful conduct for carrying out the directions of his employer.

RELIEF REQUESTED

Claimant requested an award against the Respondents in the amount of \$548,680.75 as a result of trading losses.

Respondent Commonwealth requested that the Statement of Claim be dismissed in its entirety, and that Commonwealth be awarded its costs, including reasonable attorneys fees, incurred in this arbitration.

Respondent Giordano requested that the Statement of Claim be dismissed in its entirety. Respondent Giordano also requested an award in his favor on his counterclaim against Arnett in the amount of \$2 Million and sought contribution and indemnity on his cross-claim against Commonwealth Associates.

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. Respondents Commonwealth Associates, Inc. and James Giordano be and hereby

are jointly and severally liable to the Claimant in the amount of \$87,050.00, together with interest in the sum of \$5,824.98, for a total of \$92,874.98.

2. Each party shall bear their respective costs, including attorneys' fees.
3. All claims asserted by Respondent Giordano against Claimant be and hereby are denied.
4. All claims asserted by Respondent Giordano against Respondent Commonwealth Associates, Inc. be and hereby are denied.
5. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees have been assessed by the arbitrators:

1 pre-hearing conference x \$300 = \$ 300.00
6 hearing sessions x \$1,000.00 = \$6,000.00

1. Claimant be and hereby is liable to the NASD, Inc. in the sum of \$2,100.00 representing one-third of the outstanding forum fees assessed against the parties. However, Claimant previously deposited a \$1,000.00 hearing session deposited with the NASD. Therefore, the amount due and owing to the NASD is \$1,100.00.
2. Respondent Commonwealth Associates be and hereby is liable to the NASD, Inc. in the sum of \$2,100.00 representing one-third of the outstanding forum fees assessed against the parties. In addition, the arbitrators had previously assessed a \$1,000.00 adjournment fee against Respondent Commonwealth. A total of \$3,100.00 has been assessed against Respondent Commonwealth Associates. However, Respondent Commonwealth previously deposited \$500.00 with the NASD. Therefore, the amount due and owing to the NASD is \$2,600.00.
3. Respondent James Giordano be and hereby is liable to the NASD, Inc. in the sum of \$2,100.00 representing one-third of the outstanding forum fees assessed against the parties. However, Respondent Giordano previously deposited hearing session deposits in the amount of \$1,350.00 with the NASD. Therefore, the amount due and owing to the NASD is \$750.00.

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

08-03-95 05:06PM FROM NASD ARBITRATION

TO

P002

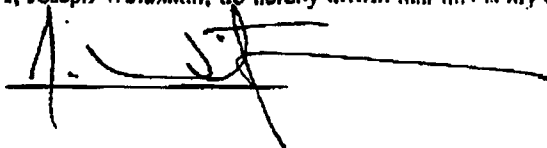
Concurring Arbitrators' Signatures
Name


Joseph M. Weitzman, Esq.
Chairperson - Public Arbitrator

Matthew Tolan
Industry Arbitrator

Saverio Cina
Public Arbitrator

I, Joseph Weitzman, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: August 4, 1995

Concurring Arbitrators' Signatures
Name

Joseph M. Weitzman, Esq.
Chairperson - Public Arbitrator



Matthew Tolan
Industry Arbitrator

Saverio Cina
Public Arbitrator

I, Matthew Tolan, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: August 4, 1995

Concurring Arbitrators' Signatures
Name

Joseph M. Weitzman, Esq.
Chairperson - Public Arbitrator

Matthew Tulan
Industry Arbitrator

Saverio J. Cina
Saverio Cina
Public Arbitrator

I, Saverio Cina, do hereby affirm that this is my decision in the above captioned matter.

NASD CASE NUMBER 93-00914

Saverio J. Cina

Executed on:
Date of Decision: July 27, 1995

Date of Decision: August 4, 1995