

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

H. Thomas and Mary V. Foley

93-04238

Name of Respondents

Wertheim Schroder & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 14, 1993, Claimants H. Thomas and Mary V. Foley, who appeared Pro Se, alleged that they purchased and sold 1000 shares of Paco Pharmaceutical stock from Respondent on the advice of Respondents' broker. Claimants further alleged that they purchased and sold 500 shares of Chrysler stock from Respondent on the advice of Respondents' broker, and that this stock was sold prematurely. Claimants contended that they purchased and sold 400 shares of Allergan stock from Respondent on the advice of Respondents' broker. Claimants further contended that they purchased 2000 shares of Oncogene stock from Respondent on the advice of Respondents' broker, and that this purchase was made on margin even though the broker knew that Claimants did not want to buy on margin. Claimants alleged that they lost investment capital due to investing with Respondent. As a result of the above, Claimants contended that they suffered damages for which the Respondent should be held liable.

Respondent Wertheim Schroder & Co., Inc., through its counsel Martin P. Unger, of Tenzer, Greenblatt, Fallon & Kaplan, New York, New York, maintained that Claimants' account with Respondent was opened with the stated investment objective of "short-term trading". Respondent further maintained that Claimants' account was not churned. Respondent denied that it breached its fiduciary duty to Claimants. Respondent further contended that Claimants intended to and did open a margin account with Respondent, and executed a

Margin Account Agreement and Loan Consent. Respondent maintained that Claimants are disappointed investors who did not make the profits they believe they should have made had they, with the benefit of hindsight, continued to hold their Chrysler stock for some unspecified period of time. As a result of the above, Respondent contended that it should not be held liable in this matter.

RELIEF REQUESTED

Claimants H. Thomas and Mary V. Foley requested \$7,500.00 in actual damages.

Respondent Wertheim Schroder & Co., Inc. requested that the Claimants' claims be dismissed in their entirety, and costs be assessed against Claimants.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Larry J. Murphy, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 6, 1993 and by the Respondent on March 7, 1994.

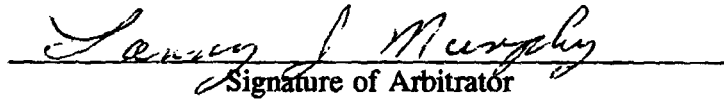
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants H. Thomas and Mary V. Foley against Wertheim Schroder & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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AFFIRMATION

I, **LARRY J. MURPHY**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: November 16, 1994