

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harold Wiant and Delores Wiant

93-05372

Name of Respondents

L.C. Wegard & Co., Inc.
Lawrence Weil

REPRESENTATION

For Claimants Harold and Delores Wiant ("Wiant") appeared Edward Seglias, Esq., of Cohen & Huntington, P.C. located in Philadelphia, Pennsylvania.

For Respondents L.C. Wegard & Co., Inc., ("Wegard") and Lawrence Weil ("Weil") appeared Mark Ross of Bernstein & Wasserman located in New York City, New York.

CASE INFORMATION

Statement of Claim filed on: October 28, 1993.

Claimant's Submission Agreement signed on: December 21, 1993.

Statement of Answer filed by Respondent Wegard on: March 25, 1994.

Respondent Wegard's Submission Agreement signed on: March 22, 1994.

Statement of Answer filed by Respondent Weil on: March 25, 1994.

Respondent Weil's Submission Agreement signed on: February 25, 1993.

HEARING INFORMATION

| | | | |
|--------------------------|-------------------|---|------------|
| Pre-Hearing Conferences: | February 8, 1995 | - | 1 session |
| | June 16, 1995 | - | 1 session |
| Hearing Dates/Sessions: | February 14, 1995 | - | 2 sessions |
| | February 15, 1995 | - | 2 sessions |
| | October 26, 1995 | - | 2 sessions |
| | October 27, 1995 | - | 2 sessions |

The hearings took place at the National Association of Securities Dealers Inc.'s offices in Philadelphia, Pennsylvania and Hotel Atop the Bellview in Philadelphia, Pennsylvania.

CASE SUMMARY

Claimants alleged that in or about July 1992, Scott Gallagher ("Gallagher"), a broker with Wegard, contacted Harold Wiant about opening an account with Wegard and investing in securities. At that time, according to Wiant, he advised Gallagher that he had only limited cash funds available from which he could potentially invest in securities and that he would soon be relying on the income generated by the IRA, Keogh and 401k accounts. In or about August 1992, Wiant stated that he opened an account with Wegard and purchased 500 warrants of Gentner Communications Corp. Shortly thereafter, the claimant stated that Gallagher left Respondent Wegard's employment, and the claimants' account was transferred to Respondent Weil. Wiant contended that although he informed Weil that his cash assets were primarily invested in an IRA account, a Keogh Plan and a 401k Plan and that these funds had to be protected, Weil disregarded Wiant's intentions and treated the account as discretionary with no restrictions on the types of securities to be purchased. In addition, the Claimants alleged that starting in January 1993, Respondent Weil began making numerous unauthorized purchases of high speculative securities without receiving Wiant's prior consent. According to Wiant, Weil executed unauthorized purchases of Linkon Corp. ("Linkon") and U.S. Transportation common stock, and failed to make disclosures, either before or after the transactions were executed, regarding Linkon and U.S. Transportation.

The Claimants also alleged that in February 1993 Weil opened a second account in the name of Harold Wiant and his wife, Delores Wiant, without the claimants' authorization. In addition, the Claimants maintained that Weil traded in this second account in the same fraudulent and reckless manner as he had with the original account. Wiant stated that Weil executed unauthorized purchases of Sequential Information Systems ("Sequential") and Primedex Corp., ("Primedex"), and failed to disclose material information about Sequential. The Claimants also contended that Respondents Weil and Wegard were purchasing numerous highly speculative and violated securities for the Wiants from Wegard's own account as Principal, and did not disclose this information to the Claimants until after the unauthorized transactions were completed.

As a result of the Respondents actions, the Claimants maintained that they suffered a loss in the amount of \$94,753.26. Based upon the foregoing, the Claimants alleged (1) violations of section 10(b) of the Exchange Act and Rule 10b-5; (2) that Respondent Wegard is responsible and liable under section 20 of the Exchange Act, 15 U.S.C. Section 78t; (3) RICO violations; (4) negligence; (5) breach of fiduciary duties; (6) misrepresentation; (7) conspiracy; (8) common law fraud and negligent misrepresentation; (9) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act.

Respondents Weil and Weggard alleged that each of the transactions in the Claimants' accounts were authorized, directed by Mr. Wiant, and consistent with the customers' investment objectives of speculation and long-term growth. In addition, the Respondents maintained that Harold Wiant is a sophisticated and experienced investor who has maintained securities accounts at several brokerage firms. The Respondents also contended that Respondent Weil often discussed various securities with Mr. Wiant, made appropriate recommendations and provided detailed information on the securities in questions and the risks involved.

Furthermore, the Respondents alleged the following affirmative defenses: (1) failure to set forth any cause of action or claim for relief; (2) Claimants authorized and directed each and every transactions for their accounts at Wegard; (3) Claimants were fully advised of all information relating to every security purchased or sold for their accounts at Wegard; (4) ratification; (5) estoppel; (6) Claimants received and reviewed confirmations and monthly statements reflecting all transactions for their accounts; (7) Claimants are not entitled to punitive damages or attorneys fees as a matter of law; and (8) Claimants controlled all transactions for their accounts at Wegard.

RELIEF REQUESTED

Claimants requested:

1. Damages in the sum of the investments made, plus lost use of the money invested, less cash distributions received, or in the alternative, out-of-pocket damages;
2. Disgorgement of profits earned by Respondents;
3. Punitive damages in the sum of \$400,000.00;
4. Actual attorneys' fees;
5. Costs and disbursements related to this suit;
6. With respect to the RICO claims, treble damages, including the lost use of the money Claimants had invested; and
7. Such other and further relief as the Panel may deem just and proper.

Respondents demanded judgment dismissing the Statement of Claim and awarding respondents all of their reasonable expenses, costs and disbursements in connection with this proceeding.

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 remains 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. The Respondents, Wegard and Weil, are liable to the Claimants jointly and severally in the amount of **TWENTY NINE THOUSAND, TWENTY DOLLARS and TWENTY FIVE CENTS (\$29,020.25)**.
2. The Respondents Wegard and Weil are, jointly and severally, liable for 75% of the forum fees. The Claimants are liable for 25% of the forum fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

| | |
|---|------------------|
| Non-refundable filing fee: | \$ 200.00 |
| Hearing Sessions (8 @ \$750 per session): | \$6,000.00 |
| Pre-hearing Sessions (2 @ \$300 per session): | <u>\$ 600.00</u> |

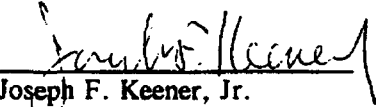
Total Fees: \$6,800.00

1. The Claimant paid \$950.00 and owes \$700.00 to the NASD.

2. Respondents Wegard and Weil jointly and severally owe \$4,950.00 to the NASD.

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

Concurring Arbitrators' Signatures
Name



Joseph F. Keener, Jr.
Chairperson

Public

Edmund L. Carey, Jr.

Industry

James J. McCann

Public

Date of Decision: December 22, 1995

Total Fees: \$6,800.00

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