

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

James W. Givens

94-02195

Name of Respondents

Lovett Underwood Neuhaus & Webb, Inc.  
Buddie C. Ballard

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 10, 1994, Claimant James W. Givens ("Givens"), through his representative Paul N. Young of Securities Arbitration Group, Inc. of Marina del Rey, California, alleged that Respondent Buddie C. Ballard ("Ballard"), an employee of Respondent Lovett Underwood Neuhaus & Webb, Inc. ("Lovett"), solicited the purchase by Claimant of 200 shares of Medco Research, Inc. common stock ("Medco") on February 12, 1992 at a price of \$28.50 per share, and that an additional purchase of 200 shares was made on March 2, 1992 at a price of \$28.125 per share. Claimant maintained that Medco was a new issue underwritten by Respondent Lovett's parent, and that it was unsuitable for Claimant given his stated investment objectives of long-term safe growth, long-term savings, safety, income, and security. Claimant further alleged that Ballard failed to disclose that Medco was a new issue, failed to explain the associated risks, failed to provide Claimant with a prospectus at the time of purchase, and stated that Medco was guaranteed to do well for many years. Claimant contended that the price of Medco subsequently declined and Ballard recommended the use of puts and calls on margin. Claimant further contended that as the price of Medco continued to decline, Ballard recommended the purchase of additional options and stated that the price of Medco would soon rise to \$35 per share. Claimant stated that the stock was sold to satisfy margin calls. Additionally, Claimant alleged breach of contract, misrepresentation, fraud, failure to follow instructions, unauthorized transactions, and breach of fiduciary duty. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondent, Lovett Underwood Neuhaus & Webb, Inc. ("Lovett") through its in-house counsel Renan I. Sugarman, Esq., Chicago, Illinois, denied each and every allegation of wrongdoing set forth in the Statement of Claim. Lovett maintained that the Medco investment was consistent with Claimant's investment objectives and prior trading history. Lovett further maintained that the initial purchase of Medco was solicited, and that the subsequent purchases on margin were Claimant's idea

and unsolicited. Respondent Lovett contended that Claimant is an intelligent, highly educated, and sophisticated investor, and that any losses suffered by Claimant should be borne by him. As a result of the above, Respondent Lovett contended that it should not be held liable in this matter.

Respondent, Buddie C. Ballard ("Ballard"), who appeared Pro Se, maintained that the Claimant's initial investment objectives were growth and income, but that over time Claimant indicated that he was interested in growth opportunities. Ballard further maintained that after the initial purchase of Medco, Claimant stated that he wished to margin his positions and buy additional shares of Medco. Ballard contended that he recommended the use of puts with Claimant's full knowledge and understanding of the risks involved. Additionally, Ballard contended that all trades were explained thoroughly to the Claimant, that all trades were authorized, and that he believed Claimant to be an intelligent, well-educated, and sophisticated investor with a broad and diverse knowledge of the securities market. As a result of the above, Respondent Ballard contended that he should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant, James W. Givens, requested \$5,503.00 in actual damages plus pre-award and post-award interest at the rate of 8%, filing fees of \$150.00, costs of \$500.00, and any further relief that the arbitrator believes are deserved and warranted.

Respondent, Lovett Underwood Neuhaus & Webb, Inc., requested that the Statement of Claim be summarily dismissed.

Respondent, Buddie C. Ballard, did not specifically state a relief.

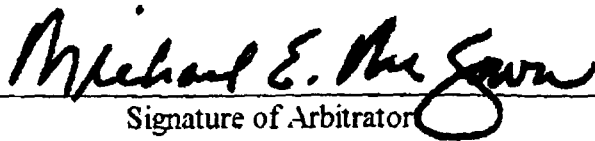
### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Michael E. McGown, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 18, 1994, by Respondent Lovett Underwood Neuhaus & Webb, Inc. on March 20, 1995, and by Respondent Buddie C. Ballard on November 18, 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 Statement of Claim filed by Claimant, James W. Givens, is denied and dismissed in its 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. ("NASD") by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, MICHAEL E. MCGOWN, ESQ., 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: July 19, 1995