

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James W. Givens

94-02329

Name of Respondents

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

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, CEO, of Securities Arbitration Group, Inc., Marina del Rey, California, alleged that Respondent Buddie C. Ballard, Jr. ("Ballard") recommended the purchase of a new issue of Medco stock in an account for the benefit of James W. Givens, II, such purchase being unsuitable for the account and inconsistent with Claimant's stated investment objectives of long-term safe growth, long-term savings, safety, income, and security. Claimant asserted that Ballard represented that the Medco stock was safe, secure, and financially and fundamentally sound. Claimant further asserted that Ballard failed to disclose that Medco was a new issue, and failed to disclose the risk associated with new issues. Claimant contended that Ballard stated that Medco stock was guaranteed to do well for many years, and recommended the establishment of a margin account. Claimant stated that after purchasing Medco the price dropped, but Ballard assured him that the analyst following the stock would quickly run the price up and recommended the use of puts and calls. Claimant further alleged that he received margin calls, that Ballard recommended the purchase of additional options, and that Ballard assured him the stock price would soon go to \$35 per share. Claimant stated that the Medco position was sold to satisfy margin requirements. Claimant additionally alleged that Respondent Lovett Underwood Neuhaus & Webb, Inc. ("Lovett") failed to properly supervise the activities of Ballard. 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, maintained that Claimant's account was assigned to Ballard after being handled by another account representative. Respondent Lovett further maintained

that the investment activity prior to Ballard's taking over of the account fails to support Claimant's assertion that the investments made were safe and conservative, but rather shows a history of aggressive growth. Lovett contended that Ballard's initial recommendation of Medco was suitable in light of Claimant's manifest investment objective. Respondent further contended that the subsequent purchases of Medco on margin were Claimant's idea and were unsolicited. Respondent asserted that claimant was intelligent and highly educated, and that his knowledge of the securities market was extensive. As a result of the above, Respondent Lovett contended that it should not be held liable in this matter.

Respondent Buddie C. Ballard, Jr., who appeared Pro Se, maintained that Claimant's investment objectives were initially growth and income, but evolved over time to more growth at Claimant's request. Ballard further maintained that prior to the initial purchase of Medco, he explained to Claimant that Medco was a speculative investment. Respondent Ballard contended that Claimant requested that the account be put on margin because Claimant wished to buy more Medco. Ballard further contended that he explained to Claimant that margining positions increased the risk. Additionally, Ballard maintained that he recommended the writing of puts after Claimant indicated his desire to lower his cost basis in Medco. Ballard stated that the writing of puts was done with Claimant's full knowledge and understanding of the risk associated. Ballard asserted that all transactions effected in Claimant's account were authorized by Claimant. As a result of the above, Respondent Ballard contended that he should not be held liable in this matter.

RELIEF REQUESTED

Claimant John W. Givens requested \$8,601.00 in actual damages, plus 8% interest from the date of the first purchase of Medco stock to the date of the award, post-award interest at 8% from the date of the award until payment of amount awarded, filing fees of \$150, and costs of representation of \$500.

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

Respondent Buddie C. Ballard, Jr. did not specifically state a relief, but asserted that Claimant's claims are without merit.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, David G. Beerbower, 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, Jr. on February 22, 1995.

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, **DAVID G. BEERBOWER, 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.

A handwritten signature in cursive script, reading "David G. Beerbower", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION:

6-9-95