

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Allen Landers and Allen Landers, trustee  
Allen Landers M.D., P.C. Retirement Plan  
and Trust

95-00131

Name of Respondents

Royce Investment Group, Inc.  
John D. Higgins  
Edward Rose

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**REPRESENTATION**

For claimants Allen Landers ("Landers") and Allen Landers, trustee Allen Landers M.D., P.C. Retirement Plan and Trust appeared Ira W. Berman, Esq. of Berman & Murra, P.C., East Rutherford, New Jersey.

For respondents Royce Investment Group, Inc. ("Royce"), John D. Higgins ("Higgins") and Edward Rose ("Rose") appeared David Hirschberg, Esq. of Wexler & Burkhart, P.C., Mitchel Field, New York.

**CASE INFORMATION**

Statement of Claim filed: January 10, 1995.

Allen Landers' Submission Agreement signed on: December 31, 1994.

Submission Agreement executed by Allen Landers as trustee of the Allen Landers M.D., P.C. Retirement Plan and Trust on: January 20, 1995.

Joint Statement of Answer filed by Royce, Higgins and Rose on: March 16, 1995.

Royce's Submission Agreement signed on: March 14, 1995.

Higgins' Submission Agreement signed on: March 14, 1995.

Rose's Submission Agreement signed on: March 14, 1995.

### **HEARING INFORMATION**

Pre-Hearing Conference:	March 14, 1996	-	One Arbitrator
Hearing Date/Sessions:	March 20, 1996	-	Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### **CASE SUMMARY**

Landers alleged that, in June 1992, after speaking with Higgins and Ted Shlisky, the President of Pharmetics Inc. ("Pharmetics"), he invested in the private placement of convertible preferred shares of Pharmetics by purchasing 15 shares of Class A Convertible Preferred for himself and 35 shares for his retirement account. Landers further alleged that he was assured that under Rule 144 he would be able to convert the preferred stock into common stock and sell the converted common stock after a two year period.

Landers maintained that, in July of 1994, the dividends for Pharmetics were not being paid and that he began the process to convert his preferred shares into common shares. Landers alleged that Rose notified his broker at Reich & Co. that Royce had no intention of converting his preferred shares of Pharmetics into common stock and that Rose advised Pharmetics not to convert his preferred shares.

Landers alleged that, in October of 1994, he was informed that a merger between Pharmetics and On Guard Systems had been approved and that he had to either turn in his shares for conversion or he would receive a check for the liquidated value.

Landers alleged that respondents used fraud and misrepresentations in connection with the sale of the convertible preferred shares of Pharmetics. Further, Landers alleged that respondents failed to perform and blocked the conversion of his convertible preferred shares of Pharmetics.

Respondents maintained that Royce acted as placement Agent for the sale of units of convertible preferred stock of Pharmetics pursuant to a private placement memorandum dated May 8, 1992. Respondents further denied making any statements or representations to Landers concerning Pharmetics or the securities that were not contained in the memorandum.

Respondents denied that they blocked or prevented the conversion of claimants' shares of Pharmetics or that they advised Pharmetics not to convert the shares. Respondents further maintained that they did not have any input into claimants' attempt to convert the shares and that

Rose merely informed Lander's broker and his attorney of Pharmetics decision that the applicable provisions of the offering did not permit Landers to convert his shares at that time.

Respondents also maintained that after completion of the merger, Landers sold his shares which relinquished all rights to receive past, present and future dividends. Respondents further maintained that they had no responsibility for the forwarding of the shares to the transfer agent and that they should not be held liable for any damages sustained as a result of the delay in the transfer.

### **RELIEF REQUESTED**

Claimants requested damages in the sum of \$213,196.63 plus punitive/treble damages for fraud and misrepresentation.

Respondents requested that all claims be dismissed and that they be awarded their attorneys' fees, costs and expenses.

### **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 original 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. Royce be and hereby is liable and shall pay claimants the sum of \$174,977.40.
2. All claims against Higgins and Rose be and hereby are dismissed in their entirety.
3. Claimants' request for punitive/treble damages is hereby denied.
4. Each party shall bear their respective costs, including attorneys' fees.
5. All other claims are hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$250.00 non-refundable filing fee submitted by claimants and have assessed the following forum fees:

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1 pre-hearing conference	= \$ 300.00
2 hearing sessions x \$1000.00	= <u>\$2,000.00</u>
Total fees assessed	= \$2,300.00

Claimants be and hereby are jointly and severally liable for the sum of \$2,300.00, representing the total amount of forum fees assessed. Claimants previously deposited \$1,000.00 with the NASD and, therefore, claimants are liable and shall pay to the NASD the sum of \$1,300.00.

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

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.

Diane Getzler, Esq.  
Chairperson-Public Arbitrator

John H. Ball, Esq.  
Public Arbitrator

David Crystal, II, Esq.  
Industry Arbitrator

Date of Decision: May 8, 1996

I, Diane Getzler, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above-referenced matter.

Diane Getzler, Esq.  
Diane Getzler, Esq.

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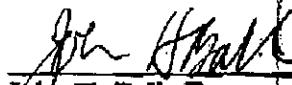
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ARBITRATORS' SIGNATURES

Diane Getzler, Esq.  
Chairperson-Public Arbitrator

  
John H. Ball, Esq.  
Public Arbitrator

David Crystal, II, Esq.  
Industry Arbitrator

Date of Decision: May 8, 1996

I, John H. Ball, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above-referenced matter.

  
John H. Ball, Esq.

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Diane Getzler, Esq.  
Chairperson-Public Arbitrator

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John H. Ball, Esq.  
Public Arbitrator

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David Crystal, II, Esq.  
Industry Arbitrator

Date of Decision: May 8, 1996

I, David Crystal, II, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above-referenced matter.

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David Crystal, II, Esq.