

## NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

### Names of Claimants

Lawrence Jarvis, individually, and as Custodian for  
James L. Jarvis, Carrie A. Jarvis, and Rebecca Jarvis

95-01949

### Names of Respondents

L.C. Wegard & Co., Inc.  
Timothy Livingston  
Leonard B. Greer  
Daniel F. Petronelli  
Victor Samaha

## REPRESENTATION

For Claimants Lawrence F. Jarvis ("Jarvis"), individually, and as a Custodian for James L. Jarvis, Carrie A. Jarvis and Rebecca Jarvis, (collectively referred to as "Claimants") appeared Thomas H. Tucker, Esq. of the firm McGowan, Engel, Tucker, Garrett & Schultz, located in Boston, Massachusetts.

For Respondent L.C. Wegard & Co., Inc. ("Wegard") appeared Jerome Selvers, Esq. of the firm Sonnenblick, Parker & Selvers, located in Freehold, New Jersey.

Respondent Leonard B. Greer ("Greer") was represented by Jerome Selvers, Esq. of the firm Sonnenblick, Parker & Selvers, located in Freehold, New Jersey for the first hearing. After the first hearing, Respondent Greer appeared pro se.

For Respondents Victor Samaha ("Samaha") and Daniel F. Petronelli ("Petronelli") appeared Pete S. Michaels, Esq. of the firm Murphy, MacKenzie, Michaels & Sullivan, LLP, located in Boston, Massachusetts.

Respondent Timothy Livingston ("Livingston") did not appear at the hearing.

## CASE INFORMATION

Claimants' Statement of Claim was filed on April 19, 1995. Claimants submitted an Amended Statement of Claim on December 1, 1995, which, among other things, added Leonard B. Greer, Daniel F. Petronelli and Victor Samaha as Respondents. Claimant Jarvis' Submission Agreement was signed on May 22, 1995. Claimant Jarvis acting as Custodian signed a Submission Agreement on December 1, 1995.

Respondents Wegard and Livingston filed a Joint Statement of Answer on July 31, 1995 and an Amended Joint Statement of Answer on January 16, 1996. Respondent Wegard's Submission Agreement

was signed on August 2, 1995. Respondent Livingston's Submission Agreement was signed on May 30, 1995.

Respondent Greer did not file a Statement of Answer or a properly executed Submission Agreement.

Respondents Samaha and Petronelli filed an Statement of Answer to the Amended Statement of Claim on February 22, 1996. Respondent Samaha did not file a properly executed Submission Agreement. Respondent Petronelli did not file a properly executed Submission Agreement.

#### HEARING INFORMATION

Pre-Hearing Conferences:	June 19, 1996	-	One Session
	June 24, 1996	-	One Session
	January 8, 1997	-	One Session
	September 30, 1997	-	One Session
Hearing Dates/Sessions:	September 11, 1996	-	Two Sessions
	September 12, 1996	-	Two Sessions
	October 22, 1996	-	Two Sessions
	October 23, 1996	-	Two Sessions
	February 12, 1997	-	Two Sessions
	February 13, 1997	-	Two Sessions
	June 4, 1997	-	Two Sessions
	June 24, 1997	-	Two Sessions
	November 4, 1997	-	Three Sessions
	November 5, 1997	-	Two Sessions

The pre-hearing conferences were held telephonically. The hearings on February 12 and 13, 1997 were conducted at the Copley Plaza Hotel, located on St. James Avenue in Boston, Massachusetts. The hearings on November 4 and 5, 1997 were conducted at the Boston Park Plaza Hotel, located on Arlington Street in Boston Massachusetts. The remaining hearings were conducted at the offices of NASD Regulation, Inc., located in Boston, Massachusetts.

#### CASE SUMMARY

Claimants alleged that, in July 1993, Livingston, a registered representative with Wegard's Providence, Rhode Island office, cold-called Jarvis and opened an account for him using inaccurate information and without obtaining necessary suitability information. Claimants also alleged that despite Jarvis' expressed lack of knowledge and experience in the stock market and interest in only low to moderate risk investments, Livingston recommended and persuaded Jarvis to buy shares of Sanyo Industry, a highly risky and speculative stock recommended by Wegard.

Claimants further alleged that, during the next five months, Livingston recommended and sold to Jarvis a substantial number of shares in Immunotherapeutics, U.S. Transportation Systems and Great American Recreation, all of which were recommended by Wegard, but which were unsuitable stocks for Claimants' investment objectives. Claimants asserted that by the middle of December 1993, Jarvis had purchased approximately \$160,000 of these stocks for his own account and a small number of shares of Immunotherapeutics for the accounts of his children.

Claimants asserted that, in recommending these stocks, Livingston failed to disclose material information concerning each of them, including that they were highly risky and speculative stocks, that the companies involved had a history of poor financial results, that they were thinly traded and that an abnormally high commission credit was being charged on the sale of them to Jarvis.

Claimants further asserted that the sales to Jarvis were part of a company-wide boiler room operation set up and operated by Respondents, whereby Respondents, using deceptive and scripted presentations, sold extremely risky, low quality stocks at inflated prices to most, if not all, of the company's customers regardless of suitability.

Claimants contended that Respondents failed to make required "penny stock" suitability determination and disclosures in connection with the sales of Immunotherapeutics to Jarvis and made excessive and undisclosed mark-ups on certain sales to him. Claimants also contended that Respondents lacked a reasonable basis for recommending the stocks which were sold to Claimants, all of which declined sharply in value a short time after their purchase notwithstanding generally rising prices in stock market indexes.

Greer maintained that he was not liable: (1) on the theory of respondeat superior since Livingston was Wegard's agent, not Greer's agent; (2) under Section 20 (a) of the Securities Exchange Act of 1934 since he acted in good faith and did not induce Livingston's actions; (3) under section 12(2) of the Securities Exchange Act of 1933 since it is applicable only to registered offerings of securities via a prospectus and it provides a good faith defense, which applies to him; (4) under Section 10(b) of the Securities Exchange Act of 1934 since liability thereunder requires proof of scienter; or (5) under Massachusetts Blue Sky Law, because it also provides for a good faith defense. Greer also maintained that he acted in good faith and did not directly or indirectly induce the acts constituting the alleged causes of action.

Livingston, Greer and Wegard maintained that Jarvis reaffirmed his investment objectives for the Wegard account in a personal meeting with Respondent Petronelli, where Jarvis was advised to invest most of his assets in municipal securities, mutual funds and high-grade growth stocks. Livingston, Greer and Wegard claimed that Jarvis continued to reaffirm his investment objectives by holding his investments long after receiving additional written confirmation of their "speculative" nature in the form of a prospectus. Livingston, Greer and Wegard also maintained that none of the stocks Jarvis purchased from Wegard were "penny" stocks as defined by Securities and Exchange Commission. Livingston, Greer and Wegard further asserted that the other Respondents did not violate any rule or law regarding the Jarvis accounts.

Samaha and Petronelli denied all allegations set forth in the Statement of Claim and Amended Statement of Claim. Samaha and Petronelli specifically maintained that Claimants made all investments knowingly and were informed of all risks associated with each investment. Samaha and Petronelli further maintained that each investment authorized by Jarvis was fully consistent with Claimants' stated objectives. Samaha and Petronelli contended that they never recommended the purchase or sale of any of the securities to the Claimants and that they did not misrepresent any facts concerning the securities. Samaha and Petronelli further contended that Claimants never complained to them regarding their dealings with Wegard or Livingston. Samaha and Petronelli also contended that the Amended Statement of Claim did not make a single specific allegation of wrongdoing by either of them, and, therefore, it failed to state a claim against them.

#### **RELIEF REQUESTED**

Claimants requested: (1) damages in the amount of approximately \$120,000.00 for out of pocket losses; (2) triple damages under Massachusetts General Laws, ch. 231, section 85J; (3) punitive damages; (4)

interest at six percent; and (5) costs and attorneys' fees in the amount of approximately \$95,000.00.

Livingston, Greer and Wegard requested that the Claimants' claim be dismissed with prejudice and that the Claimants pay all costs, including but not limited to the hearing costs, Respondents' attorneys' fees and related costs, and such other remedy as the panel judged fair and reasonable.

Samaha and Petronelli requested that the Claimants' claims be dismissed with prejudice.

### **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 remain on file with the NASD.

At the close of Claimant's case, Greer and Wegard made a motion to dismiss for failure to state a claim which was taken under advisement. Said motion to dismiss was denied by the panel at the time of reviewing the evidence and rendering a decision.

On November 21, 1996 Livingston filed for bankruptcy and accordingly all claims against him were stayed.

The panel made the following determinations regarding Respondents Greer, Samaha, and Petronelli, who failed to file properly executed Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondents Greer, Samaha and Petronelli were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondents Greer, Samaha and Petronelli pursuant to Rule 10301 of the Code.
3. The panel found that Respondents Greer, Samaha and Petronelli were each required to a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Respondents Greer, Samaha and Petronelli pursuant to Rule 10314(a) of the Code.

### **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 claims against Samaha and Petronelli are hereby dismissed.
2. Greer and Wegard are hereby jointly and severally liable and shall pay Claimants the sum of \$97,265.00.
3. Greer and Wegard are jointly and severally liable for pre-judgement interest at 6% from May 25, 1994 to the date of this award.

4. Greer and Wegard are hereby jointly and severally liable for post-judgement interest at 12% from the date of the award until payment of the award to Claimants.
5. Greer and Wegard are hereby jointly and severally liable and shall pay Claimants the sum of \$33,000.00 in attorneys' fees and costs pursuant to Chapter 110(a) Section 410 of the Massachusetts Code Annotated.
6. Greer and Wegard are hereby jointly and severally liable and shall pay Claimants \$750.00 as reimbursement for the hearing session deposit.

#### FORUM FEES


Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously paid by the Claimants, the \$750.00 postponement fee previously submitted by Respondent Wegard and the \$750.00 postponement fee previously submitted by Respondent Samaha. In addition, the arbitrators have assessed the following forum fees:

2 Pre-hearing Conferences/One Arbitrator x \$300.00	=	\$ 600.00
2 Pre-hearing Conferences/Three Arbitrators x \$750	=	\$ 1,500.00
21 Hearing Sessions x \$750.00	=	\$ 15,750.00
Total Forum Fees	=	\$ 17,850.00

1. Greer and Wegard are jointly and severally liable for the sum of \$17,850.00, representing the total forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Greer and Wegard shall pay the balance of \$17,100.00 to NASD Regulation, Inc. and \$750.00 to Claimants as provided in the "Award" section above.
2. Wegard is liable for the sum of \$350.00, representing the member surcharge.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

  
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Lucy J. Karl, Esq.  
Public Chairperson

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Elizabeth K. Norsworthy, Esq.  
Public Panelist

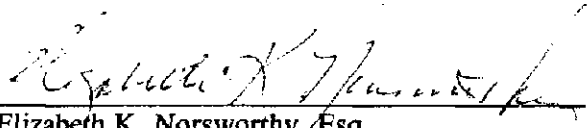
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John D. Hughes, Esq.  
Industry Panelist

Date of Decision: February 11, 1998

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Elizabeth K. Norsworthy, Esq.  
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John D. Hughes, Esq.  
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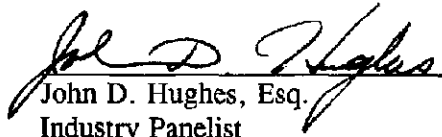
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Date of Decision:      February 11, 1998