

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

Alan A. Niederland

95-04651

Name of Respondents

L.C. Wegard & Co., Inc.  
Brian Patrick Wells

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REPRESENTATION

Claimant Alan A. Niederland ("Claimant") was represented at the hearing by James M. Strauss of Goodkind Labaton Rudoff & Sucharow LLP, New York, New York.

Respondent Brian Patrick Wells ("Wells") was represented at the hearing by Marc J. Ross, New York, New York.

Respondent L.C. Wegard ("Wegard") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on September 29, 1995.

Claimant's Submission Agreement was signed on September 21, 1995.

The Joint Statement of Answer was filed by Wegard and Wells on December 12, 1995.

Wegard did not file a Submission Agreement.

Wells did not file a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:

January 14, 1997 - two sessions

January 15, 1997 - two sessions

Hearing Location:

NASD Regulation, District 9  
Philadelphia, PA

### CASE SUMMARY

Claimant alleged, among other things, that his broker, Wells, and Wells' employer, Wegard (collectively known as "Respondents"), violated federal law and state law, including committing common law fraud, negligence, negligent misrepresentation, breach of fiduciary duty, breach of contract and breach of third party beneficiary contract to abide by the rules of the National Association of Securities Dealers ("NASD"), as well as violations of the rules of the NASD, in connection with Claimant's purchase of seven securities recommended by Wells. In particular, Claimant alleged that Wells, acting on behalf himself and Wegard, assured Claimant that he and Wegard would only recommend investments that conformed to Claimant's stated goals of growth and income while maintaining safety of principal, yet nevertheless put Claimant into primarily high risk investments that were not at all in keeping with Claimant's investment goals. Claimant alleged the securities in which Respondents recommended investing in were "low-cap" securities, low-rated or non-rated by recognized rating agencies. Claimant alleged that neither Wells nor Wegard disclosed to Claimant that investment in these securities were recommended by them solely because Wegard was a major market maker of these securities and earned substantial additional income as a result of transactions in these securities. Claimant alleged that by October, 1994 Claimant had incurred more than \$100,000 in losses. Claimant alleged that he discussed his losses with Wells who offered him an explanation that the brokerage firm of Hibbard Brown ("HB") had been the principal market maker in several of the securities Claimant had purchased. Claimant alleged that he had never been told that the prospects of the securities he was investing in would in any way be dependant on the viability of HB or any other brokerage firm. Claimant asserted that he had been of the belief that the securities he was investing in would perform based upon their own fundamentals and that their fundamentals were sound.

Respondents, in their joint Answer, denied all allegations of wrongdoing alleged by Claimant. Respondents specifically maintained, among other things, that Claimant was a knowledgeable and experienced investor, that Claimant has substantial means, that Claimant had informed Respondents that his investment objectives were aggressive growth, that Claimant was fully and accurately apprised of all material risks associated with each security purchased in his Wegard account. Respondents further maintained that each security purchased in Claimant's account was consistent with his stated investment objective of aggressive growth and was suitable given Claimant's experience, assets, and stated investment objectives. Respondents maintained that Claimant authorized each transaction in his account, and that Claimant ratified each transaction in his Wegard account by promptly and timely paying for same.

### RELIEF REQUESTED

Claimant requested damages of \$104,809.62; pre-award interest at the rate of 9% per annum from November 1, 1994 to date of payment; and all costs attributed to this arbitration proceeding including reasonable attorneys' fees.

Respondents requested that the Statement of Claim be dismissed.

**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 Regulation.

Wegard did not appear at the hearing, nor was it represented by Counsel. Wegard did file a Joint Statement of Answer and participated in an Administrative Conference on August 20, 1996. In addition, neither Wegard or Wells signed a Submission Agreement. Pursuant to Rule 10301 of the NASD Regulation Code of Arbitration Procedure and the by-laws of the NASD Regulation, the Panel exercised its jurisdiction over Respondents Wegard and Wells and they are bound by the rulings and determination set forth herein.

**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. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees except as forum fees are specifically provided for below.
3. Any and all damages not specifically addressed herein are denied in their entirety.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 hearing sessions x \$750 = \$3,000

Forum Fees Assessed Against: Claimant

Claimant is assessed forum fees in the amount of \$3,000.00; however, Claimant is entitled to offset this amount with his hearing session deposit of \$750 so that the amount due from Claimant as forum fees is \$2,250. Fees are payable to the NASD Regulation, Inc.

Date Award Signed

2/10/97

Concurring Arbitrators' Signatures

Joseph R. Lally  
Joseph R. Lally, Esq., Chairman  
Public Arbitrator

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Carol H. Gold, Esq. Panelist  
Public Arbitrator

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Frank T. Salera, Panelist  
Industry Arbitrator

Date Award Served by the NASD Regulation:

February 12, 1997

Date Award Signed

Concurring Arbitrators' Signatures

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Joseph R. Lally, Esq., Chairman  
Public Arbitrator

2/7/97

Carol H. Gold  
Carol H. Gold, Esq. Panelist  
Public Arbitrator

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Frank T. Salera, Panelist  
Industry Arbitrator

Date Award Served by the NASD Regulation:

February 12, 1997

Date Award Signed

Concurring Arbitrators' Signatures

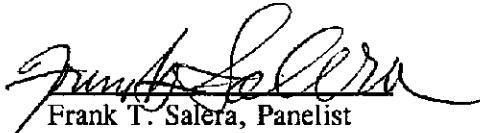
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Joseph R. Lally, Esq., Chairman  
Public Arbitrator

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Carol H. Gold, Esq. Panelist  
Public Arbitrator

*Feb 7, 1997*

  
Frank T. Salera, Panelist  
Industry Arbitrator

Date Award Served by the NASD Regulation: *February 12, 1997*