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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Danny E. Huntley

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Securities Dealers, Inc.

1996

95-04807

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Name of Respondents

Cohig & Associates, Inc.  
Robert W. Lewis

**REPRESENTATION**

For claimant Danny E. Huntley ("claimant") appeared Robert H. Putnam, Esq., a sole practitioner located in Atlanta, Georgia.

For respondent Cohig & Associates, Inc. ("Cohig") appeared Russell K. Bean, Esq., of the firm Cohig & Associates, Inc. located in Englewood, Colorado.

For respondent Robert W. Lewis, II ("Mr. Lewis") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: October 11, 1995.

Claimant's Submission Agreement was signed on: September 19, 1995.

Respondent Cohig & Associates, Inc. Statement of Answer was filed on: December 6, 1995.

Respondent's Cohig & Associates, Inc. Submission Agreement was signed on: December 6, 1995.

Respondent Robert W. Lewis Statement of Answer was filed on: December 4, 1995.

Respondent Robert W. Lewis did not submit an executed Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions: August 15, 1996 - 2 Sessions

### CASE SUMMARY

Claimant alleged that respondents Mr. Lewis and his firm Cohig directed him into a form of trading that jeopardized and subsequently drained his cash position. Claimant further alleged that he made it clear to Mr. Lewis his investment goals, and specifically, his personal financial situation at the time he directed his account into this highly risky position. Claimant asserted that Mr. Lewis convinced him that short selling Oxford Health Plans, Inc. ("Oxford") and Breed Technologies ("Breed") were sound investment decisions. Claimant further asserted that short selling these two positions was a departure from his historical market positions of sound buying with respondent Mr. Lewis. Claimant stated that Mr. Lewis never fully revealed all the ramifications involved with shorting the market. Claimant contended that although the ultimate decision was his, he felt that the direction he was pushed was clearly a reversal of his historical relationship with Mr. Lewis. Claimant further contended that Mr. Lewis had a professional responsibility to be sensitive and alert to his concerns. Claimant argued that to prove that this claim is not just another embittered response to a market loss, he was willing to continue with a new posture of sound investing by taking a long term buy position. Claimant alleged that because his account afforded only limited activity, he did not hear for several months from Mr. Lewis for a progress report or to shore up their shaky relationship. Claimant further alleged that Mr. Lewis only requested to speak with him when his written request to transfer the account came across his desk.

Respondent Cohig & Associates, Inc. maintained that claimant opened his account with them in May of 1994. Respondent further maintained that claimant transferred his account over to them, with his broker Mr. Lewis. Respondent stated they were not yet aware of the types of transaction claimant engaged in while at his prior brokerage firm. Respondent contended that claimant's first transaction with Cohig was a short sale of 100 shares of Breed on June 15, 1994. Respondent further contended that the June 15, 1994 short sale of Breed made the claimant a profit of \$1,768.01. According to Respondent, claimant's total position in Breed as of July 21, 1994 was \$27,581.56. Respondent maintained that over the next several months, the price of Breed remained relatively stable, but high enough such that, to purchase the securities to close the position would cause a small loss. Respondent further maintained that on December 21, 1994 Breed's stock was purchased by the claimant for a total price of \$27,860.00. Respondent also maintained that although these securities were held separate from the short position and generated a dividend, they were eventually used to close the short position, causing a small loss of \$278.44.

Respondent contended that on July 14, 1994, claimant short sold 500 shares of Oxford for \$21,910.00. Respondent further contended that shortly after the transaction, the share price of Oxford rose steadily from \$44.50 per share to over \$80 per share. Respondent maintained that due to a large short position in the stock, the price almost doubled. Respondent alleged that their representatives could not have foreseen these market conditions. Respondent further maintained that the claimant closed his short position by purchasing 500 shares of Oxford for \$40,130.00, causing a loss of \$18,220.00.

Respondent also maintained that if claimant did not understand the risks of short selling or was uncomfortable with them, he could have complained to Mr. Lewis's supervisor after the first transaction in June of 1994. Respondent contended that claimant could have also complained to Mr. Lewis's supervisor as the price of Oxford rose. Respondent alleged that neither of these events occurred. Respondent also contended that the risks of investing by means of short selling were fully disclosed to the claimant. Respondent maintained that the short position was squarely within claimant's investment objectives.

Respondent Robert W. Lewis, II maintained that claimant's investment objective for the account were growth of principal through aggressive investment. Respondent further maintained that claimant's

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investment objectives were to be pursued by taking both long positions and short selling in equities.. Respondent alleged that all transaction in the claimant's account were completely discussed with the claimant prior to a purchase or sell order being placed.

Respondent contended that with respect to the transaction in Breed Tech, Inc., the transaction was discussed at length with the claimant prior to the execution. Respondent further contended that once the short sales were made he discussed the positions with the claimant, from time to time, and all the decisions on whether to continue to hold the short positions or to close them were made by the claimant.

Respondent maintained that with respect to Oxford Health Plans, Inc., the short sale of this stock was thoroughly discussed with the claimant prior to entry and execution of the transaction. Respondent further maintained that the respondent recommended that the position in Oxford should be closed out when the stock increased to \$55.00 a share and again at \$65.00 a share. Respondent argued that the decision to maintain the positions through these prices and to ultimately close the positions out were investment decisions made solely by the claimant. Respondent contended that Oxford plan was clearly within the investment objectives of the claimant.

Respondent further contended that claimant purchased 2,000 shares of Continental at \$9 1/4. Respondent also contended that the stock has since split 3/2 and the claimant has an unrealized substantial gain in this stock.

**RELIEF REQUESTED**

Claimant Danny E. Huntley requested that the panel find in his favor and award the following: (1) \$18,220.00, representing the total amount lost by short selling Oxford Health Plans, Inc.; (2) \$1,420.57, representing the total amount lost by short selling Breed Technologies; (3) \$400 for arbitration cost and filing.

Respondent Cohig & Associates, Inc. requested that the claims of the claimant be dismissed in their entirety.

Respondent Robert W. Lewis, II requested that the claims of the claimant be dismissed in their entirety.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitrator made the following rulings concerning respondent Robert W. Lewis, who did not file a Submission Agreement.

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that respondent Robert W. Lewis was an associated person of a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Robert W. Lewis, II pursuant to Section 12 of the NASD Code of Arbitration Procedure.

3. In view of (2) above, the arbitrator found that respondent Robert W. Lewis II was required to properly execute a Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the arbitrator found that the Statement of Claim was properly served upon the respondent, pursuant to Section 25(a) of the Code.

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.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Robert W. Lewis II and Cohig & Associates be and hereby jointly and severally liable to the claimant for the sum of \$4,100.00 arising out of said suitability and failure to supervise.
2. All other relief requests are denied.

### **ARBITRATOR'S REPORT**

With respect to Claimant's Suitability claim as presented, and Failure to Supervise, the sole arbitrator found that Respondents Robert W. Lewis and Cohig & Associates failed to properly advise Claimant of the risks associated with an investment which was not suitable to Claimant's objectives and failed to supervise the account with respect to Claimant's interests.

### **FORUM FEES**

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$100.00 non-refundable filing fee and have assessed the following Forum Fees:

2 Sessions	X	\$300.00	=	\$600.00
minus claimants' \$300.00 deposit			=	\$300.00
total outstanding			=	\$300.00

The arbitrator determined that Claimant Huntley, Respondent Cohig and Respondent Lewis each be one-riskiest liable for the forum fees.

Therefore Claimant Danny E. Huntley be and hereby liable for the sum of \$200.00 representing the total forum fees assessed. Claimant previously deposited \$300.00 with the NASD. Therefore, claimant owes the NASD nothing. Respondent Robert Lewis II be and hereby is liable and shall pay to the NASD in the sum of \$150.00. Respondent Lewis be and hereby is liable and shall pay to Claimant the sum of \$50.00. Respondent Cohig & Associates be and hereby is liable and shall pay to the NASD the sum of

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\$150.00. Respondent Cohig & Associates be and hereby is liable and shall pay to Claimant the sum of \$30.00.

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

Arbitrator's Signature



Richard Allan Kays, Esq.

Date of Decision: October 21, 1996