

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

David L. and Leslie C. Gura

CASE NO.
95-04977

Name of Respondents

L.C. Wegard & Co., Inc.
John V. Adams
VTR Capital, Inc.

REPRESENTATION

Claimants David L. and Leslie C. Gura ("Claimants"): Joseph Decker, Esq. of Joseph Decker & Associates, Pittsburgh, PA.

Respondent L.C. Wegard & Co., Inc. ("Wegard"): There was no representation for Wegard at the arbitration hearing.

Respondent John V. Adams ("Adams"): Eli A. Zlokas, Esq., Attorney at Law, Pittsburgh, PA.

Respondent VTR Capital, Inc. ("VTR"): Peri Erlanger, Esq. of Bernstein & Wasserman, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed: October 18, 1995.

Amended Statement of Claim filed: March 22, 1996.

Claimant's Submission Agreement signed on: October 9, 1995.

Statement of Answer filed by Respondents L.C. Wegard Co., Inc. and John V. Adams filed on: December 20, 1995.

Wegard and Adams did not execute uniform submission agreements.

Statement of Answer and Motion to Dismiss filed by VTR filed on: May 22, 1996.

VTR did not execute a uniform submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: March 24, 1997 - one session.
Hearing Date/Sessions: June 3, 1997, three sessions.
Hearing Location: Westin William Penn Hotel, Pittsburgh, PA.

CASE SUMMARY

Claimants alleged, among other things, that based on their conservative investment objectives and limited financial resources, Adams had no reasonable basis for recommending speculative and risky securities, but nevertheless did so because Wegard was a principal and/or market maker for these issues. Claimants alleged that Adams failed to disclose pertinent information and knowingly misrepresented the nature of the securities and the facts regarding these companies and their products. Claimants alleged that Adams knowingly recommended unsuitable securities for purchase by Claimants. Claimants alleged that they relied on Adams' recommendation; that Adams knew that Claimants were relying on his recommendations; and that Claimants justifiably relied on Adams' recommendations. Claimants alleged that, as a result of their reliance on Adams, they suffered financial damages. Claimants alleged that Adams breached his contractual and fiduciary duties to communicate fairly and honestly with his clients. Claimants alleged that Adams failed to use reasonable care in representing the nature of the securities and failed to disclose to the Claimants that he was recommending speculative and risky securities. Claimants alleged that Adams intentionally inflicted emotional distress upon Claimant David Gura ("Mr. Gura") by attempting to intimidate him by displaying his handgun to Mr. Gura when Mr. Gura had expressed displeasure with Adams' recommendations. Claimants further alleged that as successor corporation to Wegard by its purchase of Wegard's customer accounts through the November 27, 1995 asset purchase agreement, VTR is liable to Claimants for all alleged acts, omissions and conduct. VTR's acquisition of Wegard's accounts was further exhibited through its notification to Claimants advising that they had become clients of VTR; Mr. Gura's subsequent call to VTR during which he was informed that VTR had acquired Wegard's brokerage operations; and Mr. Gura's phone call to Wegard's Monroeville, Pennsylvania office which was answered "VTR Capital."

Wegard and Adams moved to dismiss, denying Claimants' allegations; and maintained that Claimants authorized and directed the purchase of each and every security for their account; that Claimants ratified each and every transaction in their account; that Wegard and Adams made no misrepresentations or omissions to Claimants; that Wegard and Adams did not breach any fiduciary duty owed to Claimants; that Wegard and Adams only recommended securities to Claimants which were suitable for them in light of their stated investment objectives and their financial means; that the proximate causes of Claimants' detriment were the methods they decided to use to finance their investments; that Wegard and Adams either discouraged or were simply not aware of the methods employed by Claimants; that Claimants are disappointed investors and that while Wegard and Adams regret losses incurred by Claimants, Wegard and Adams are not guarantors against such losses.

VTR requested that it be dismissed from this matter as VTR maintained that it is not a successor corporation to Wegard; that it never assumed the business operations and/or liabilities of Wegard; that VTR merely purchased Wegard's space and equipment of that particular branch; that Adams was never employed or paid by VTR; that no stock positions or transactions were executed by VTR on behalf of

Claimants; that VTR never agreed to assume any of the liabilities, obligations, or debts of Wegard in regard to the accounts related to the customer accounts of the November 27, 1995 asset purchase agreement; and that all of the securities held in Claimants' account at Wegard were transferred out of that account three months before the transfer of customer accounts to VTR.

RELIEF REQUESTED

Claimants requested, in their pleadings, that Respondents be liable for actual losses in excess of \$57,000, plus other damages including interest, attorney's fees, punitive damages in the amount of \$100,000, prejudgment interest and expenses. Claimants also requested that VTR's Motion to Dismiss be denied, and that VTR be held liable for the torts of Wegard, its predecessor, because of a lack of tangible consideration given to the selling company which could be made available to meet creditor claims and the presence of fraud; that VTR be held liable because of the "de facto" nature of its merger evidenced in the "continuity of management" where VTR hired Wegard's employees and continued to use Wegard's "plants, lands, designs, inventories, work in progress, patents, trademarks and customer lists;" and that VTR be held to an implied assumption of liability as the successor broker dealer.

Wegard and Adams, in their pleadings, requested that the Statement of Claim be dismissed.

VTR, in its pleadings, requested that it be dismissed as a party, and that the Amended Statement of Claim be dismissed. VTR further requested costs and attorneys' fees in defending this matter.

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 NASD Regulation.

Pursuant to Rule 10301 of the Code of Arbitration Procedure, the panel exercised its jurisdiction over Respondents Wegard, Adam, and VTR. The panel determined that Wegard, Adams, and VTR were required to submit to this arbitration, notwithstanding their failure to submit submission agreements. Respondents Wegard, Adams, and VTR are bound by the panel's rulings and determination as set forth in this award.

The panel considered and denied the Respondents' Motions to Dismiss prior to the hearing. The Motion to Dismiss was also raised at the hearing and denied. The panel proceeded to hear the case on the merits.

Mr. John V. Adams refused to attend the proceedings, and the evidence at the arbitration indicated that Adams is no longer in the securities business.

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 VTR is the successor to Wegard.

2. That Respondents VTR, Wegard and Adams are jointly and severally liable to Claimants and shall pay Claimants the sum of \$49,957. 59; inclusive of prejudgement interest.
3. Respondents VTR, Wegard and Adams are jointly and severally liable for punitive damages and shall pay to Claimants punitive damages in the sum of \$25,000.00.
4. That each party shall pay their costs and attorneys' fees except as forum fees are specifically addressed below.

FORUM FEES

Pursuant to Rule 10322 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(1 pre hearing conference x \$300) + (3 hearing session x \$750) = \$2,550 - minus \$750 hearing session fee paid by Claimants = \$1,800 net due the NASD Regulation, Inc.

Claimants paid a filing fee of \$200 and a hearing session fee of \$750 = \$950 total deposited by Claimants

Forum Fee Assessed Against: Respondents VTR, Wegard and Adams jointly and severally.

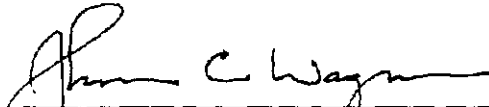
The Panel directs that Respondent VTR, Wegard and Adams, jointly and severally, reimburse directly to Claimants their initial filing fee and hearing session deposit of \$950. VTR, Wegard and Adams are jointly and severally assessed the remaining forum fees in the amount of \$1,800.

The remaining Forum Fees are payable to NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

6/24/97



Thomas C. Wagner, Esq. - Chairman
Public Arbitrator

Robert R. Thomas - Panelist
Public Arbitrator

Carl Hohnbaum - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

June 26, 1997

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DATE

Concurring Arbitrators' Signatures

June 20, 1997

Thomas C. Wagner, Esq. - Chairman
Public Arbitrator

Robert R. Thomas
Robert R. Thomas - Panelist
Public Arbitrator

Carl Hohnbaum - Panelist
Industry Arbitrator

Date Award served by NASD Regulation: June 26, 1997

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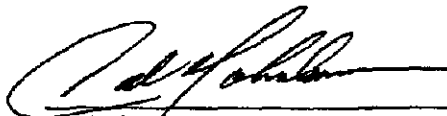
DATE

Concurring Arbitrators' Signatures

Thomas C. Wagner, Esq. - Chairman
Public Arbitrator

Robert R. Thomas - Panelist
Public Arbitrator

19 June '97



Carl Holmbaum - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

June 26, 1997