

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

Name of Claimants

Albert Cohen,  
James Furr,  
Catherine Sullivan,  
Martin Tregnan,  
Patrick Tregnan,  
Frances E. Dodd,  
George Waselinko,  
William Mays,  
Marta Jonec,  
Bill Braiman,  
Molly Frick Wampler,  
Walter Frick  
Carolyn Conner-Loisel,  
Frank Marzullo, and  
Dr. Mark Somberg

v.

Arbitration No.  
95-05781

Name of Respondent

W. J. Gallagher & Co., Inc., and  
Pearl Thompson

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**REPRESENTATION**

For Claimants:

David Scott Kadin, Esq.  
Kaplan, Kenegos & Kadin  
Beverly Hills, California

Paul Schifino, Esq.  
Schifino & Lindon  
Los Angeles, California

Leo Fassen, Esq.  
Law Offices of Leo Fassen  
Beverly Hills, California

For Respondent Pearl Thompson:

Philip A. Kramer, Esq.  
Harmon M. Kaslow, Esq.  
Kramer & Kaslow  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed:	December 5, 1995
Addendum to Statement of Claim filed:	December 22, 1995
Claimant Albert Cohen's Submission Agreement signed:	November 24, 1995
Claimant James Furr's Submission Agreement signed:	November 8, 1995
Claimant Catherine Sullivan's Submission Agreement signed:	December 11, 1995
Claimant Martin Tregnan's Submission Agreement signed:	November 24, 1995
Claimant Patrick Tregnan's Submission Agreement signed:	November 27, 1995
Claimant Frances E. Dodd's Submission Agreement signed:	November 21, 1995
Claimant George Waselinko's Submission Agreement signed:	November 22, 1995
Claimant William Mays' Submission Agreement signed:	November 28, 1995
Claimant Marta Jonec's Submission Agreement signed:	November 28, 1995
Claimant Bill Braiman's Submission Agreement signed:	November 28, 1995

Claimant Molly Frick Wampler's Submission Agreement signed:	November 27, 1995
Claimant Walter Frick's Submission Agreement signed:	November 27, 1995
Claimant Carolyn Conner-Loisel's Submission Agreement signed:	December 4, 1995
Claimant Frank Marzullo's Submission Agreement signed:	December 12, 1995
Claimant Dr. Mark Somberg's Submission Agreement signed:	November 28, 1995
Statement of Answer filed by Respondent W. J. Gallagher & Co., Inc.:	March 15, 1996
Cross-Claim filed by Respondent W. J. Gallagher & Co., Inc.:	March 15, 1996
Statement of Answer filed by Respondent Pearl Thompson:	June 27, 1997

### HEARING INFORMATION

Pre Hearing Conference Dates / Sessions:	November 7, 1996 (1 Session) November 13, 1996 (1 Session) May 5, 1997 (1 Session) June 4, 1997 (1 Session)
Hearing Dates / Sessions:	November 19, 1996 (2 Sessions) November 20, 1996 (2 Sessions) November 21, 1996 (2 Sessions)  March 17, 1997 (2 Sessions) March 18, 1997 (2 Sessions) March 21, 1997 (2 Sessions)  December 1, 1997 (2 Sessions) December 2, 1997 (2 Sessions) December 3, 1997 (2 Sessions)
Hearing Location:	Los Angeles, California

### **CASE SUMMARY**

Claimants alleged that Respondents engaged in misrepresentation, breach of fiduciary duty, fraud, and elder abuse regarding the sale of shares in Green Life, Inc. Claimants also alleged that Respondents were negligent.

Respondents denied each allegation of wrongdoing found in the Claimants' Statement of Claim and Addendum to the Statement of Claim.

Respondent W. J. Gallagher & Co., Inc. filed a Cross-Claim for equitable indemnity, total indemnity, comparative indemnity, equitable apportionment of fault, equitable contribution, and declaratory relief against Cross-Respondents, the Claimants in this action.

### **RELIEF REQUESTED**

Claimant sought judgment against Respondents for rescission of the sale of Green Life, Inc. shares and/or compensatory damages, interest, costs, and reasonable attorney's fees.

Respondents requested that Claimants take nothing by way of their Claim and sought reimbursement of arbitration and court costs and attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The following Claimants were dismissed: James Furr, Patrick Tregnan, William Mays, Molly Frick Wampler, Walter Frick, and Carolyn Conner-Loisel.

The Arbitration Panel issued an order dated November 19, 1997 which specified in part:

1. Respondent Pearl Thompson's Motion for Judgment on the causes of action for negligence and negligent misrepresentation are denied as to all Claimants except Bill Braiman. Thompson's Motion for Judgment on the causes of action for negligence and negligent misrepresentation is granted as to Claimant Bill Braiman.
2. All claims for breach of an oral contract and money had and received are dismissed.
3. Respondents' Motion to Dismiss based upon statute of limitations grounds is denied.
4. Respondent W. J. Gallagher's Motion for Judgment is granted.

The Arbitration Panel also issued an order dated December 4, 1997 which specified in part:

1. Claimants' Motion to Reconsider the Arbitrators' Ruling on the Motion for Judgment regarding W. J. Gallagher and W. J. Gallagher & Co., Inc. is denied.

The parties have agreed that the Award in this matter may be executed either 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 Regulation, Inc., Office of Dispute Resolution.

### 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. Respondent Pearl Thompson is liable to and shall pay Claimant Albert Cohen the sum of \$4,930.00.
2. Respondent Pearl Thompson is liable to and shall pay Claimant Marta Jonec the sum of \$28,488.00.
3. Respondent Pearl Thompson is liable to and shall pay Claimant Martin Tregnan the sum of \$32,304.00.
4. Respondent Pearl Thompson is liable to and shall pay Claimant Frances Dodd the sum of \$1,402.00.
5. Respondent Pearl Thompson is liable to and shall pay Claimant George Waselinko the sum of \$12,714.00.
6. Respondent Pearl Thompson is liable to and shall pay Claimant Harold Sullivan for the estate of Catherine Sullivan the sum of \$6,851.00.
7. Respondent Pearl Thompson is liable to and shall pay Claimant Frank Marzullo the sum of \$38,595.00.
8. Respondent Pearl Thompson is liable to and shall pay Claimant Mark Somberg the sum of \$8,130.00.
9. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

Four Pre-Hearing Conference Sessions @ \$750.00/Session	=	\$3,000.00
Eighteen Hearing Sessions @ \$750.00/Session	=	\$13,500.00
<u>Total Forum Fees assessed</u>	=	<u>\$16,500.00</u>

Claimants Albert Cohen, Marta Jonec, Martin Tregnan, Frances Dodd, George Waselinko, Harold Sullivan, Frank Marzullo, and Dr. Mark Somberg's One-Half Share, jointly and severally	=	\$8,250.00
<u>Credit for Hearing Session Deposit</u>	=	<u>(\$750.00)</u>
<u>Claimants' Balance Due</u>	=	<u>\$7,500.00</u>

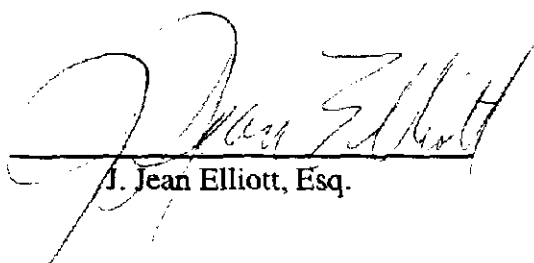
<u>Respondent Pearl Thompson's One-Half Share</u>	=	<u>\$8,250.00</u>
<u>Respondent Pearl Thompson's Balance Due</u>	=	<u>\$8,250.00</u>

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS**

<u>Name</u> .....	<u>Public / Industry</u>
J. Jean Elliott, Esq.	Public Arbitrator
Rose Marie Wright	Industry Arbitrator
Karen G. Andres, Esq.	Public Arbitrator

**Concurring Arbitrators' Signatures**

  
J. Jean Elliott, Esq.

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Rose Marie Wright

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Karen G. Andres, Esq.

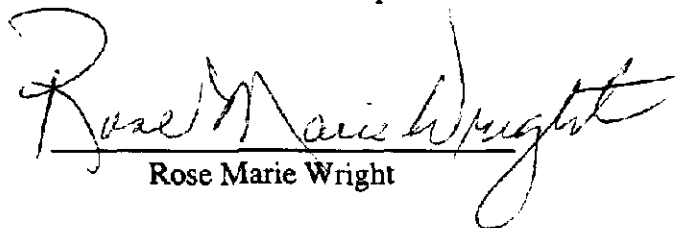
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Rose Marie Wright	Industry Arbitrator
Karen G. Andres, Esq.	Public Arbitrator

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Rose Marie Wright

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Karen G. Andres, Esq.

Date of Service: \_\_\_\_\_



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Karen G. Andres, Esq.	Public Arbitrator

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\_\_\_\_\_  
J. Jean Elliott, Esq.

\_\_\_\_\_  
Rose Marie Wright

Karen G. Andres  
Karen G. Andres, Esq.

Date of Service: APRIL 3, 1998