

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

---

In the Matter of the Arbitration Between

Name of Claimants

Melvin P. and Cathy R. Gold

96-01802

Name of Respondents

L.C. Wegard & Co., Inc.  
John Adams

---

**REPRESENTATION**

For claimants Melvin P. and Cathy R. Gold ("claimants") appeared their representative George M. Kontos, Esq. of the law firm Swensen Perer & Johnson located in Pittsburgh, Pennsylvania.

Respondents L.C. Wegard & Company, Inc. ("LCW") and John Adams ("Adams") did not appear at the evidentiary hearing conducted in this matter.

**CASE INFORMATION**

Statement of Claim filed: April 26, 1996.

Claimants' Submission Agreement signed on: April 12, 1996.

Respondent Adams filed a Statement of Answer on: June 19, 1996.

Respondent Adams' Submission Agreement signed on: June 17, 1996.

Respondent LCW did not file a Statement of Answer or Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions: April 18, 1997 - one session

The hearing was conducted at the Westin William Penn Hotel located in Pittsburgh, Pennsylvania.

### **CASE SUMMARY**

Claimants alleged that Adams, their stock broker and employee of LCW, improperly handled their account and gave unsuitable investment advice which they followed to their detriment. Claimants further alleged that they opened an account at LCW in 1992 and that Adams undertook no investigation as to their financial goals or financial background. Claimants also alleged that Adams regularly invested in imprudent, inappropriate securities such as Sanyo Industries, Inc., Primedex Health Systems, Inc., Consolidated Technology Group, Ltd., Primedex Bonds and Immunotherapeutics, Inc. Claimants contended that LCW was the market maker for and/or had an interest in the aforementioned securities which Adams did not disclose. Claimants further contended that the securities purchases were made based on respondents' profit interest excluding their own financial interest and goals. Claimants also contended that around June or July of 1994, the securities fell considerably in value and as a result they have suffered losses for which the respondents should be held liable.

Respondent Adams maintained that claimants opened an account with LCW and that prior to the opening he had several conversations with Melvin Gold. Respondent further maintained that they discussed municipal bonds, mutual funds and fixed income securities such as corporate bonds and treasury bills. Respondent also maintained that he learned from Gold that he had prior investment experience and that the Golds wished to diversify their portfolio. Respondent contended that he explained the risks of investing to Gold and was informed that the claimants were comfortable with the risk. Respondent contended that after a security was purchased, he obtained financial information from Gold and supplied it to LCW which did not find a suitability problem. Respondent further contended that he made several other recommendations which were approved by LCW and by claimants. Respondent also contended that these investment were suitable and in accordance with claimants' objectives of long term growth and speculation. Respondent further contended that at no time did he make a misrepresentation or make a trade without claimants' consent. Respondent also contended that in January or February of 1995, the account was transferred to Neil White, another LCW broker and that as of that time he has no knowledge as to what occurred with the account.

### **RELIEF REQUESTED**

Claimants requested at least \$43,000.00 in damages plus any and all damages permissible under the Pennsylvania Securities act, 70 P.S. Section 1-501, et seq.

Respondent Adams requested that the claims be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning respondent LCW which did not file a Statement of Answer nor a Submission Agreement, and concerning respondents LCW and Adams who failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent LCW was a member of the NASD at the time this controversy arose and that respondent Adams was an associated person of a member firm. Consequently, the panel found personal jurisdiction over respondents LCW and Adams pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondent LCW was required to file with NASD Regulation a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent LCW, pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310 10315 and 10318 of the Code, the panel found that NASD Regulation provided respondents Adams and LCW with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondents LCW and Adams, whose absences were unexcused.

The parties appearing at the hearing 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.

#### 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. Respondents L.C. Wegard and John Adams be and hereby are jointly and severally liable and shall pay to claimants Melvin and Cathy Gold \$29,805.00 in damages.
2. Respondents L.C. Wegard and John Adams be and hereby are jointly and severally liable and shall pay to claimants Melvin and Cathy Gold simple interest at the rate of 6% per annum from the date of the award to the date of payment.
3. Respondents L.C. Wegard and John Adams be and hereby are jointly and severally liable and shall pay to claimants Melvin and Cathy Gold punitive damages in the amount of \$30,000.00.
4. The parties shall bear their respective costs and attorneys fees.
5. All other relief requests are denied.

**FORUM FEES**

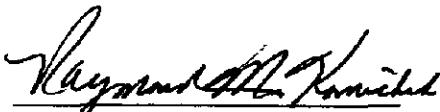
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$120.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

one sessions x \$400.00	= \$400.00
minus claimants' \$400.00 deposit	= <u>\$400.00</u>
total outstanding	= \$ 0.00

Respondents L.C. Wegard and John Adams be and hereby are jointly and severally liable for the sum of \$400.00 representing the total amount of forum fees assessed. Therefore, respondents shall pay to claimants \$400.00 as reimbursement of the hearing session deposit.

ARBITRATORS' SIGNATURES

I, Raymond M. Komichak, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.



Raymond M. Komichak, Esq.  
Public Chairperson

I, Dan Altman, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

---

Dan Altman, Esq.  
Public Arbitrator

I, Paul J. Snyder, III, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

---

Paul J. Snyder, III  
Industry Arbitrator


Date of Decision: June 5, 1997

ARBITRATORS' SIGNATURES

I, Raymond M. Komichak, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Raymond M. Komichak, Esq.  
Public Chairperson

I, Dan Altman, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Dan Altman, Esq.  
Public Arbitrator

I, Paul J. Snyder, III, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Paul J. Snyder, III  
Industry Arbitrator

Date of Decision: June 5, 1997

ARBITRATORS' SIGNATURES

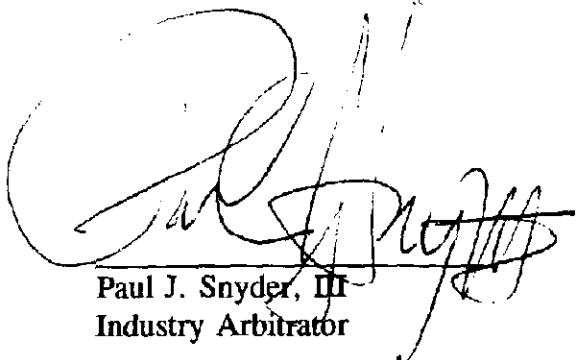
I, Raymond M. Komichak, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Raymond M. Komichak, Esq.  
Public Chairperson

I, Dan Altman, Esq, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Dan Altman, Esq.  
Public Arbitrator

I, Paul J. Snyder, III, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Paul J. Snyder, III  
Industry Arbitrator

Date of Decision: June 5, 1997