

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Daniel B. Darling

and

96-02335

Name of Respondent

Cohig & Associates, Inc.  
James Arville Wallstrom

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### **REPRESENTATION OF PARTIES**

Daniel B. Darling ("**Claimant**") was represented by Noel Guardi, Esq., Denver, Colorado.

Cohig & Associates, Inc. ("**Respondent Cohig**") and James Arville Wallstrom ("**Respondent Wallstrom**") (collectively as "**Respondents**") were represented by Russell K. Bean, Esq., Cohig & Associates, Inc., Lakewood, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about May 31, 1996. Submission Agreement of Claimant Daniel B. Darling was signed on May 23, 1996.

Statement of Answer was filed by Respondents Cohig & Associates, Inc. and James Arville Wallstrom on or about July 11, 1996. Submission Agreement of Respondent Cohig & Associates, Inc. was signed on July 10, 1996 by Russ Bean. Submission Agreement of Respondent James Arville Wallstrom was signed on July 1, 1996.

### **HEARING INFORMATION**

The hearing was held on Tuesday, April 1, 1997 for two (2) sessions and Wednesday, April 2, 1997 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents Cohig and Wallstrom sold to him stock in MTC Electronic Technologies Co., Inc. (MTCEF) and Diversified Communications Corp., Ltd. (DVG) and warrants of Soricon Corporation (SRCC) by means of misrepresentation or omissions of material facts. Specifically, Claimant alleged that when Respondents recommended and sold these securities, Cohig as a market maker in MTCEF and SRCC, investment banker for SRCC, knew or in the exercise of reasonable diligence, could have known material adverse information that they failed to disclose.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that they had no knowledge of or should have known of the developments which occurred with these securities. Respondents also stated that the entire market was caught by the disclosures of MTCEF and DVG, which is evidenced by the class actions and other lawsuits filed in those cases. With regard to SRCC, if Respondents had known the information of the merger, they could not have conveyed that information to Claimant without violating insider trading laws.

Respondents further stated that while the Claimant lost money investing in the market, Claimant was aware of the risks and was provided as much information about those investments as Respondents had available to them. Respondents also asserted affirmative defenses including, but not limited to contributory negligence, failure to mitigate, and the claims are barred by applicable statutes of limitation.

### **RELIEF REQUESTED**

Claimant requested an award against Respondents, jointly and severally, for such legal relief as the arbitrators deem appropriate, including, the losses on the transactions at issue (\$approximately \$229,538), actual damages, interest at the statutory rate, costs and reasonable attorneys' fees.

Respondents requested that the claim be denied in its entirety, and for such other relief as the arbitration panel deems proper.

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

The Claimant at the beginning of the hearing dropped the claim regarding DVG and reduced the requested relief accordingly.

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 original(s) remain 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. Respondents Cohig & Associates, Inc. and James Arville Wallstrom shall be and hereby are jointly and severally liable for and shall pay to the Claimant Daniel B. Darling the sum of \$6,575 (six thousand five hundred seventy five dollars).
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of February 15, 1994 to and inclusive of the date this award is paid in full.
3. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Daniel B. Darling. Claimant Daniel B. Darling shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750 as forum fees. Respondents Cohig & Associates, Inc. and James Arville Wallstrom shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation Inc. Office of Dispute Resolution the sum of \$1,500 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350.

The NASD Regulation, Inc. Office of Dispute Resolution shall not assess postponement fees for the postponement previously granted in this matter. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ John L. Worcester

John L. Worcester  
Public Arbitrator, Presiding Chair

April 7, 1997

/s/ Berwyn Davies

Berwyn Davies  
Public Arbitrator

April 7, 1997

/s/ Devra Perch

Devra Perch  
Industry Arbitrator

April 7, 1997