

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William T. McGann

96-04505

Name of Respondents

VTR Capital, Inc.
L.C. Wegard & Company, Inc.
Marc A. Varricchione

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on October 10, 1996, claimant William McGann ("claimant"), who appeared Pro Se, alleged that respondents VTR Capital, Inc. ("VTR"), L.C. Wegard & Company, Inc. ("L.C. Wegard") and Marc Varricchione ("Varricchione") sold stock to him in violation of SEC rule 15g-2. Claimant further alleged in October 1995, he purchased 125 shares of International Franchise Systems, Inc. ("Doms") from Varricchione of L.C. Wegard. Claimant also alleged that before he purchased the stock he was not informed that the stock was a penny stock or the bid and offer prices for the penny stock. Claimant asserted that he was not told the compensation received by the brokerage firm's salesperson for the trade. Claimant further asserted that he did not sign a written statement from the brokerage firm accurately describing his financial situation, investment experience and investment goals. Claimant also asserted that the brokerage firm did not receive his written consent to buy the penny stock. Claimant contended that a few weeks ago, he received some penny stock disclosure documents from the company holding the stock in his name. Claimant further contended that the documents appear to be a copy of SEC Rule 15g-2 of the Securities Enforcement Remedies and the Penny Stock Reform Act of 1990 and discussed the information that he is required to receive from the broker in a penny stock. Claimant alleged that approximately two to three weeks after he received confirmation, he was sent a monthly account statement which showed the stock had dropped approximately \$6.00 in this period of time. Claimant further alleged that within a week of his purchase, Varricchione switched firms and moved to VTR.

Respondent Varricchione, who appeared Pro Se, maintained that when he first contacted claimant he explained his role as a broker and the services his firm provided. Respondent Varricchione further maintained that claimant expressed an interest and gave him his mailing address for him to forward his business card and the firm's brochure. Respondent Varricchione also maintained that he next contacted claimant, wherein claimant revealed to him his market experience with his 401K plan and his interest in getting involved in the stock market. Respondent Varricchione contended that he informed claimant of recent market updates and the possible future opportunities, wherein claimant expressed an interest in hearing about them.

Respondent Varricchione further contended that on or about Monday, October 30, 1995, he contacted claimant to discuss Doms. Respondent Varricchione also contended he presented a fair and balanced recommendation of the stock. Respondent Varricchione maintained that he included such facts as company background, management, potential expansion, the price of the stock, risk factors and other relevant company facts and information. Respondent Varricchione further maintained they discussed claimant's investment objectives, personal information, income and net worth, investment experience, and other facts that are necessary in establishing suitability for an investor. Respondent Varricchione also maintained that the Doms is not a penny stock as regulated by the SEC's, definition and thus did not require the required forms. Respondent Varricchione contended that claimant was sent a confirmation which stated, as the rules required, bid and offer of the security, any mark-up, mark-down, or commission pertaining to this transaction. Respondent Varricchione further contended that at no time did his compensation as a broker enter the conversation, nor is it required to be disclosed by industry rules. Respondent Varricchione also contended that per industry regulations, claimant's signature was not required before opening the account and executing the trade.

Respondent VTR through its representative and counsel Peri Erlanger, Esq., of the law firm Bernstein & Wasserman located in New York City, New York maintained that L.C. Wegard has ceased doing business and as a result in November 1995, claimant's account was transferred to VTR, which had assumed the lease and purchased certain assets of L.C. Wegard's New York office. Respondent VTR further maintained that claimant never purchased any securities in his VTR account. Respondent VTR also maintained that after customer accounts were transferred they contacted and directed their clearing agent to forward all customers whose accounts held penny stocks, a cover letter and Risk Disclosure Document ("document") pertaining to those stock. Respondent VTR contended that unfortunately their clearing firm did not include the document with the cover letter, so VTR sent claimant the document. Respondent further contended that the only reason they send the document to customers is because it is VTR's general practice. Respondent also contended that it is simply not liable for losses claimant incurred as a result of his purchase of Doms.

RELIEF REQUESTED

Claimant William McGann requested \$1,038.75 in damages.

Respondent Varricchione requested that the claims of claimant be dismissed in their entirety.

Respondent VTR requested that the claims of claimant be dismissed in their entirety with prejudice, plus costs and expenses, and such other and further relief as the arbitrator deems just and proper.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Sandra Lee Dolan, Esq., was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant William McGann on October 8, 1996 and Varricchione on November 8, 1996. Respondent VTR did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant William McGann against respondents VTR, L.C. Wegard and Varricchione are dismissed in their entirety.

2. All other relief requests are denied.
3. The \$50.00 filing fee previously deposited by claimant shall be retained by NASD Regulation, Inc.

AFFIRMATION

I, **Sandra Lee Dolan, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Sandra Lee Dolan, Esq.

Date of Decision: May 16, 1997