

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Robert Lichtenstein

97-01828

Name of Respondents

William Saydein  
George Swan  
Cygnnet Securities, Inc.

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**REPRESENTATION**

For Robert Lichtenstein ("Lichtenstein") appeared Matthew S. Levine, Esq. of the firm Singer Frumento LLP, located in New York, New York. Prior to the hearing in this matter Lichtenstein assigned his claim to John J. Gibbons as Trustee for the liquidation of Cygnnet Securities, Inc., Debtor.

For John J. Gibbons as Trustee for the liquidation of Cygnnet Securities, Inc., Debtor appeared Jeffrey P. Flynn, Esq. of the firm Gibbons, Del Deo, Dolan, Griffin & Vecchione, located in Newark, New Jersey.

For Respondent William Saydein ("Saydein") appeared Michael G. Shannon, Esq., of the firm Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, located in New York, New York.

Respondent George Swan ("Swan") did not enter an appearance in this matter.

Respondent Cygnnet Securities, Inc. ("Cygnnet") did not enter an appearance in this matter.

**CASE INFORMATION**

Lichtenstein's Statement of Claim was filed on April 9, 1997. Lichtenstein's Submission Agreement was signed on April 2, 1997.

Saydein's Statement of Answer was filed on March 23, 1998. Saydein did not file a Submission Agreement.

Swan did not file a Statement of Answer or sign a Submission Agreement.

Cygnnet did not file a Statement of Answer or file a Submission Agreement.

### **HEARING INFORMATION**

Pre-Hearing Conferences:	November 26, 1997	-	1 session (Full Panel)
	December 17, 1997	-	1 session (Full Panel)
	March 16, 1998	-	1 session (Full Panel)
	December 4, 1998	-	1 session (Full Panel)
Hearing Dates/Sessions:	March 2, 1999	-	2 sessions (Full Panel)
	March 3, 1999	-	2 sessions (Full Panel)

The pre-hearing conferences were conducted by telephone. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Lichtenstein alleged that he opened a personal securities account with Cygnnet in 1995, and Swan, the president and owner of Cygnnet, was his account executive. Lichtenstein further alleged that he signed an agreement with WS Clearing, Inc. ("WS Clearing") in which it was disclosed that WS Clearing was the clearing firm for Cygnnet. Lichtenstein maintained that Saydein was the president of WS Clearing.

Lichtenstein alleged that, on February 25, 1997, he received 10 separate confirmations documenting that a total of 70,600 shares of Data Race, Inc. had been purchased in his account. Lichtenstein further alleged that he knew nothing of these trades and he had not authorized the purchase of the stock. Lichtenstein alleged that, on February 26, 1997, Swan acknowledged that an error had occurred and stated the securities in question were in fact purchased by and for a Cygnnet corporate house account. Lichtenstein maintained that Swan stated that the stock positions would be moved from his account to the Cygnnet corporate account immediately.

Lichtenstein alleged that he received a telegram from WS Clearing stating that Cygnnet had ceased operations on February 27, 1997, that his securities account had a maintenance margin call of \$422,044.00, and that, if he failed to deposit \$422,044.00 or marginable securities with a market value of \$645,727.00 in his account by March 3, 1997, his account would be liquidated to cover the maintenance call. Lichtenstein alleged that, on February 28, 1997, Swan wrote to Saydein at WS Clearing acknowledging that he placed all the trades in question for his corporate account and memorializing that he had repeatedly asked WS Clearing to transfer the trades from Lichtenstein's account to his corporate account but was told by Saydein that the securities would not be moved because Cygnnet's corporate account did not have enough equity to cover the maintenance call.

Saydein maintained that the injuries and damages, if any, of which Lichtenstein complained were directly and proximately caused and contributed to by the acts of Lichtenstein. Saydein also

maintained that the actions of other respondents, persons, or entities were intervening and superseding causes of the injuries and damages, if any, of which Lichtenstein complained. Saydein alleged that any actions taken by him as an employee of WS Clearing were well within the course and scope of his employment, and because WS Clearing was under the protection of the United States Bankruptcy Court liquidation proceeding, the automatic stay effective as of the day of the bankruptcy petition filing precluded this instant matter from proceeding.

### **RELIEF REQUESTED**

Lichtenstein requested judgment against Respondents, jointly and severally, for compensatory damages of more than \$449,220.00, punitive damages in excess of \$500,000.00, reasonable attorney's fees, interest, costs and disbursement, and such other further relief as the arbitrators may deem just and proper.

Saydein requested that Lichtenstein's claim be denied, that he be awarded his costs, and such other and further relief as the arbitrators deem just and proper.

### **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 original remains on file with the NASD.

By letter dated June 1, 1998, counsel for Robert Lichtenstein informed the NASD that the claims of Robert Lichtenstein were assigned to John J. Gibbons as Trustee for the liquidation of Cygnet Securities, Inc., Debtor, pursuant to a settlement in the matter of Cygnet Securities, Inc., Debtor, Adv. Proc. No. 97-2651 (SIPA)(RG), Cygnet Securities Acct. No. 053-31004-2, Claim No. 25, between Robert Lichtenstein and John J. Gibbons as Trustee for the liquidation of Cygnet Securities, Inc., Debtor.

Cygnet was placed into liquidation before the United States Bankruptcy Court pursuant to the Securities Investor Protection Act. Accordingly, all claims against Cygnet were stayed.

Swan filed a Chapter 7 Petition in Bankruptcy on July 6, 1998. Accordingly, all claims against Swan were stayed.

The panel made the following determinations concerning Saydein, who did not file a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Saydein was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Saydein pursuant to Rule 10301 of the Code.

3. The panel found that Saydein was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Saydein pursuant to Rule 10314 (a) of the Code.

### **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 Saydein is hereby liable and shall pay to John G. Gibbons as trustee for the liquidation of Cygnet Securities, Inc., Debtor compensatory damages of \$449,220.00, with 9% interest per annum accruing from March 4, 1997 until payment.
2. All other claims, including requests for attorneys' fees and punitive damages, are denied.
3. Each party shall bear their own costs.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee paid by Lichtenstein and have assessed the following Forum Fees:

4 pre-hearing conferences x \$1,000.00	=	\$4,000.00
4 hearing sessions x \$1,000.00 each	=	<u>\$4,000.00</u>
Total	=	\$8,000.00

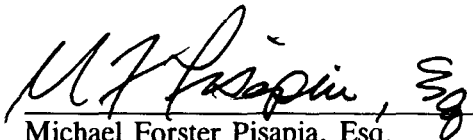
Saydein is hereby liable and shall pay the sum of \$8,000.00, representing the total forum fees assessed.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

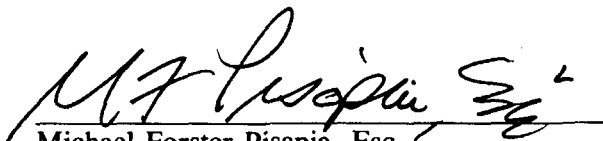
Michael Forster Pisapia, Esq. - Public Chairperson  
Julian Hess - Public Arbitrator  
James R. Madan - Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
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Michael Forster Pisapia, Esq.  
Chairperson-Public Arbitrator

Date of decision: April 13, 1999

I, **Michael Forster Pisapia**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Michael Forster Pisapia, Esq.

**ARBITRATION PANEL**

Michael Forster Pisapia, Esq. - Public Chairperson

Julian Hess - Public Arbitrator

James R. Madan - Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

A handwritten signature in black ink, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan  
Industry Arbitrator

Date of decision: April 13, 1999

I, **James R. Madan**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

A handwritten signature in black ink, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan