

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Al Baraka Investment &
Development Company

No. 91-00729

Name of Respondents

Dr. Nizar Yaqub,
Gibraltar Investments,
Vanguard Capital,
Broadcourt Capital Corporation, and
Pershing Securities, a division of
Donaldson, Lufkin & Jenrette Securities
Corporation

REPRESENTATION OF PARTIES

For Claimant: Martin R. Castro, Esq. of Baker & McKenzie,
Chicago, Illinois.

For Respondents Dr. Nizar Yaqub and Gibraltar Investments:
Howard S. Suskin, Esq. of Jenner & Block, Chicago, Illinois.

For Respondents Vanguard Capital and Broadcourt Capital
Corporation: Jeffrey S. Kob, Esq. of Miller & Milove, San Diego,
California.

For Respondent Pershing Securities, a division of Donaldson,
Lufkin & Jenrette Securities Corporation: Thomas A. Franko,
Esq., Vice President & Assistant General Counsel Pershing
Securities, Jersey City, New Jersey.

CASE INFORMATION

Statement of Claim filed: March 1, 1991.

Claimants' Submission Agreement signed on: March 7, 1991.
Statement of Answer, Cross Claim for indemnification, and Motion to Dismiss filed by Respondent, Pershing Securities, a division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing Securities" or "Pershing") on: April 26, 1991.

Respondent Pershing Securities' Submission Agreement signed on: April 25, 1991.

Joint Statement of Answer filed by Respondents, Vanguard Capital and Broadcourt Capital Corporation on: May 20, 1991.

Respondent Vanguard Capital's Submission Agreement signed on: May 8, 1991.

Respondent Broadcourt Capital Corporation's Submission Agreement signed on: May 9, 1991.

Joint Statement of Answer filed by Respondents, Dr. Nizar Yacub and Gibraltar Investments on: May 22, 1991.

Respondent Dr. Nizar Yacub's Submission Agreement signed on: May 9, 1991.

Respondent Gibraltar Investments' Submission Agreement signed on: May 9, 1991.

Claimant's Response to Pershing Securities Motion to Dismiss filed: May 21, 1991.

Motion to Dismiss filed by Broadcourt Capital Corporation on: September 3, 1991.

Respondents, Dr. Nizar Yacub and Gibraltar Investments' Answer to Pershing Securities Cross Claim filed on or about: September 17, 1991.

Claimant's Response to Broadcourt Capital Corporation's Motion to Dismiss on: October 11, 1991.

Respondent Vanguard Capital Corporation's Cross Claim for indemnification against Respondents Dr. Nizar Yacub and Gibraltar

Investments filed: November 6, 1991.

Respondent Dr. Nizar Yacub and Gibraltar Investments Response to Motion of Vanguard Capital to Add Cross Claim for Indemnification filed: November 15, 1991.

Respondent Dr. Nizar Yacub's Answer to Cross Claim of Vanguard Capital, and Cross Claim for indemnification against Vanguard Capital, Broadcourt Capital Corporation, and Pershing Securities filed on or about: December 11, 1991.

Respondent Gibraltar Investments' Answer to Cross Claim, and Cross Claim for indemnification against Vanguard Capital, Broadcourt Capital Corporation, and Pershing Securities filed on or about: December 11, 1991.

Respondent Pershing Securities Answer to the Cross Claims of Dr. Nizar Yacub and Gibraltar Investments filed: January 7, 1992.

Respondents, Vanguard Capital and Broadcourt Capital Corporation's Answer to the Cross Claim of Respondent Dr. Nizar Yacub filed: January 13, 1992.

Respondents, Dr. Nizar Yacub and Gibraltar Investments' Motion to Dismiss pursuant to Sections 16 and 35 of the NASD Code of Arbitration Procedure filed: May 29, 1992.

Respondents, Vanguard Capital and Broadcourt Capital Corporation's Memorandum in Support of Dismissal of Claimant's claims filed: June 8, 1992.

Claimant's Response to the Motion to Dismiss filed: June 10, 1992.

Respondent Pershing Securities' Memorandum in Support of Dismissal filed: June 16, 1992.

Respondents, Vanguard Capital and Broadcourt Capital Corporation's Reply to Claimant's Response to Respondents' Motion to Dismiss filed: June 17, 1992.

HEARING INFORMATION

Pre-Hearing conference

dates: November 20, 1991. One (1) session.

April 23, 1992. One (1) session.

Hearing date: July 31, 1992. One (1) session.

Hearing Location: Chicago, Illinois.

SUMMARY

On September 13, 1991, Respondents, Dr. Nizar Yacub and Gibraltar Investments ("Gibraltar") served Claimant Al Baraka Investment & Development Company ("Claimant") with a request for documents pursuant to Section 32 (b) (1) of the NASD Code of Arbitration Procedure. Gibraltar has alleged that Claimant had refused to furnish those documents. On October 25, 1991, Gibraltar filed a Motion to Compel pursuant to Section 32 (b) (4) directed to those documents that Claimant had refused to produce.

In November of 1991, the undersigned arbitrators presided over a pre-hearing conference concerning Claimant's refusal to produce documents. The written decision of the panel had been forwarded to the parties on December 6, 1991. Gibraltar has alleged that from December 1991 through February of 1992, Claimant ignored the arbitrators' order, and had failed to produce any documents which the panel had directed Claimant to produce.

Another pre-hearing conference was held on April 23, 1992, specifically in relation to Claimant's refusal to produce documents. Gibraltar alleged that Claimant had not complied with the order from the April pre-hearing directing Claimant to produce the information requested as to the twelve (12) securities acquired by Gibraltar for Claimant, and to furnish an explanation as to why the November 1991 order had not been complied with. An order to that effect was sent to the parties on April 30 and May 6, 1992. Gibraltar further stated that Claimant offered no other excuse for its failure to produce, other than Claimant's executives in Saudi Arabia would not permit compliance with the order. This statement had been transmitted in a letter from the Claimant dated April 30, 1992.

On May 8, 1992, Gibraltar filed a request to Dismiss the above-captioned arbitration citing Claimant's failure to produce documents pursuant to the panel's orders, and alleged to have been central to Gibraltar's case. After reviewing the May 8, 1992 request, and the document production that Claimant had made up to that time, the undersigned chairman ordered Gibraltar to make a Motion to Dismiss and file a brief in support of the Motion. In addition, Claimant was ordered to respond to the motion. The other parties to this arbitration were allowed to file responses to Gibraltar's Motion. After review of the Motion to Dismiss, Claimant's response, and the Memorandum in support of the Motion filed by Respondents Vanguard Capital and Broadcast Capital Corporation ("Broadcast"), and a second Memorandum which had been filed by Pershing Securities, this matter was set for hearing by the request of the parties, and pursuant to Section 14 (a) of the NASD Code of Arbitration Procedure.

In its Response to the Motion to Dismiss, Claimant alleged that Gibraltar had been blurring the issue of Gibraltar's mismanagement and failure to properly supervise Claimant's portfolio, and the wrongful efforts to induce Claimant to maintain its portfolio with Gibraltar by promising a 10 per cent return. In addition, Claimant alleged that it had made good faith efforts to comply with the Arbitrators' orders, and that production had been made between February 1992 and April 1992, of those documents relevant to the requests that were available to Claimant. Claimant also referred to Islamic Law (but failed to cite any supporting provision), the size of the company, and the international scope of its operations as factors leading to late production or nonproduction of documents ordered to be produced by the panel. Claimant further asserted that it had not acted in bad faith, nor in flagrant or wilful disregard of the panel's orders. For those reasons, Claimant requested that the Motion to Dismiss be denied.

The issues of Pershing Securities' and Broadcast Capital Corporation's Motions to Dismiss, previously filed with the NASD and taken under advisement by the panel at the November 1991 pre-hearing conference, were not taken up by the panel during the hearing held on July 31, 1992.

AWARD

After considering the Motion to Dismiss, Responses, and oral arguments from all parties made on July 31, 1992, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination at the hearing held on July 31, 1992 pursuant to Section 14 (a) of the NASD Code of Arbitration Procedure. Without making a finding on the merits of the case, the arbitrators rule as follows:

1. Respondents, Dr. Nizar Yaqub and Gibraltar Investments' Motion to Dismiss pursuant to Section 16 of the NASD Code of Arbitration Procedure is hereby granted. The parties are hereby referred to the remedies provided by applicable law.

OTHER COSTS

2. Each party shall bear their own costs of this arbitration, except as set forth below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 pre-hearing conference sessions X \$300.00 = \$600.00

1 hearing session X \$750.00 = \$750.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$600.00 are assessed

against Claimant.

Pursuant to Sections 43 (c) and 30 (b) of the Code of Arbitration Procedure, the NASD shall retain the \$750.00 postponement fee previously paid to the NASD by the Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

August 24, 1992

/s/Arthur Medow
Arthur Medow
Presiding Chair
Public Arbitrator

August 24, 1992

/s/Howard Z. Gopman
Howard Z. Gopman
Public Arbitrator

August 21, 1992

/s/John T. Hogan
John T. Hogan
Industry Arbitrator

Date of Service by the NASD: _____