

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Thomas R. Dever :
Charles N. Williams :

Claimants :

vs. :

Hibbard Brown & Company, Inc. :
Michael J. Young :
Donald C. Heaney :

Respondents :

PUBLIC

CASE #91-02484
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 12, 1991, Claimants, Thomas R. Dever & Charles N. Williams, who appeared Pro Se, alleged that Respondent Michael J. Young, an Account Executive of Respondent, Hibbard Brown & Company, Inc. solicited them to purchase 800 shares of Truvel Corporation ("Truvel") at \$2.00 a share on December 18, 1989 by misrepresenting its financial status and withholding relevant facts. Claimants further alleged that prior to this purchase they informed Respondent, Michael J. Young that they were not interested in over the counter stocks or in broker's recommendations because they did their own research and stock selection. Claimants contended that Respondent Michael J. Young advised them that Respondent, Hibbard Brown & Company, Inc. had done the research and had determined that Truvel stock was an exceptional recommendation which was well positioned for long term growth. Claimants further contended that although they repeatedly requested Respondents, Michael J. Young and Hibbard Brown & Company, Inc. to provide financial information on Truvel they have never received any information from them either before or after their purchase. Claimants asserted that a few weeks after their purchase, Respondent Michael J. Young advised them that they had a chance to sell their Truvel stock for \$2 1/4 a share and in turn, he recommended a new stock in which they could invest in with this profit. Claimants further asserted that they informed Respondent Michael J. Young the very next day to sell their Truvel stock, at which time Respondent Michael J. Young informed them that the offer had been withdrawn and that they should continue to hold their Truvel stock as originally planned. Claimants further alleged that

Respondent, Michael J. Young withheld relevant facts at the time of this recommendation in that the Truvel stock book value was near zero at the time of the purchase due to Truvel's 4 1/2 years of consecutive losses. Claimants argued that Respondents, Michael J. Young, Hibbard Brown & Company, Inc. and Donald C. Heaney, branch manager, statements and omissions made in recommending the Truvel stock violated Rule 10-b5 of The Securities and Exchange Act of 1934 and grossly misrepresented Truvel's financial status. Claimants further argued that Respondent, Michael J. Young's mishandling of their account and Respondents, Hibbard Brown & Company, Inc. and Donald C. Heaney's failure to supervise Respondent Michael J. Young created losses to their account.

Respondents, Hibbard Brown & Company, Inc., Michael J. Young and Donald C. Heaney by and through their outside counsel, Lewis D. Lowenfels, Esq. Sole Practitioner, New York, NY, maintained that Respondent Michael J. Young recommended that Claimants, Thomas R. Dever and Charles N. Williams purchase Truvel Corporation stock only after substantial research and due diligence was conducted by Respondent, Hibbard Brown & Company, Inc. analytic staff. Respondents further maintained that Claimants, as sophisticated investors, weighed the risks inherent in the over-the-counter market, evaluated the potential of the investment by independent analysis and only then decided to place their order with Respondent, Michael J. Young on December 18, 1989 to purchase 800 shares of Truvel at \$2.00 a share. Respondents contended that shortly thereafter, a move in the market value of the security caused Respondent, Michael J. Young to contact Claimants to suggest they sell their shares at a profit but through Claimant's hesitation they lost this opportunity and decided to hold the security. Respondents further contended that in the following months Truvel was adversely impacted by a number of events that left the common stock without a value. Respondents asserted that the financial data that Claimants refer to in their Statement of Claim was not known by Respondents at the time of the recommendation and purchase, therefore, they deny violating Rule 10-b5 and any breach of their fiduciary duty. Respondents further asserted that all information provided to Claimants was done in good faith and all analysis and due diligence was conducted on then available information and Respondents should not be accountable for information not available at the time of the recommendation.

RELIEF REQUESTED

Claimants, Thomas R. Dever and Charles N. Williams requested \$1,602.00 in damages plus \$8,206.00 in Punitive Damages together with interest at the rate of 8% and other expenses from Respondent, Hibbard Brown & Company, Inc. Claimants requested \$1.00 each in damages from Respondents, Michael J. Young and Donald C. Heaney.

Respondents, Hibbard Brown & Company, Inc., Michael J. Young and Donald C. Heaney requested the claim be denied.

AWARD

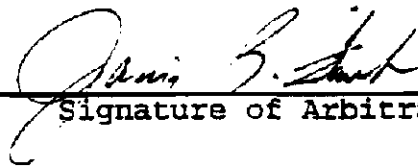
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Janis B. Funk, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 18, 1991, by the Respondent, Hibbard Brown & Company, Inc. on October 2, 1991, by Respondent Donald C. Heaney on September 4, 1991 and by Respondent, Michael J. Young on September 4, 1991.

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. Respondent, Hibbard Brown & Company, Inc. is liable and shall pay to the Claimants, Thomas R. Dever and Charles N. Williams the sum of \$1602.00 in damages.
2. Respondent, Hibbard Brown & Company, Inc. is liable and shall pay to the Claimants simple interest at the rate of 8% per annum from December 18, 1989 to the date of payment of the award.
3. The Claimant's request for Punitive Damages is denied.
4. The claims of Claimants, Thomas R. Dever and Charles N. Williams against Respondent, Michael J. Young are dismissed.
5. The claims of Claimants, Thomas R. Dever and Charles N. Williams against Respondent, Donald C. Heaney are dismissed.
6. The parties shall bear their respective costs.
7. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Thomas R. Dever & Charles N. Williams shall be retained by the NASD, Inc. Respondent, Hibbard Brown & Company, Inc. is liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

AFFIRMATION

I, JANIS B. FUNK, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Janis B. Funk", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: May 22, 1992