

In the Matter of the Arbitration Between :  
: Anthony J. Russo :  
: :  
: Claimant : CASE #92-00266  
: AWARD  
vs. :  
: :  
Hibbard, Brown & Co., Inc. :  
: Respondent :

In a claim filed with the National Association of Securities Dealers, Inc. on January 24, 1992, Claimant Anthony J. Russo by and through his counsel, Robert I. Rabinowitz, Esq., Sole Practitioner, Red Bank, New Jersey, alleged that on May 10, 1989 he purchased 3,000 units of Technodyne, Inc. from Respondent, Hibbard, Brown & Co., Inc. and each technodyne unit consisted of three shares of common stock, one share of convertible preferred stock and one warrant, thereby, Claimant through his ownership of the Technodyne units, owned 9,000 shares of common stock, 3,000 shares of preferred stock and 3,000 warrants, each position represented by a different share certificate. Claimant further alleged that on or about June 8, 1989 Claimant instructed Respondent to deliver the Technodyne warrants, at which time, Claimant was unaware that the 3,000 shares of preferred stock was not included in the package containing the share certificates. Claimant contended that in June 1990, approximately one year later, when he desired to sell his entire position of Technodyne units, he brought the certificates to another brokerage firm to sell them, at that time, Claimant was informed that the units could not be sold since he did not have physical possession of the preferred shares. Claimant further contended that in June 1990 Claimant contacted Respondent regarding obtaining a new certificate for the preferred shares and at the instructions of Jerry Wardell, an employee with Respondent, he executed an affidavit of loss in order to obtain a new certificate for the preferred shares. Claimant asserted that he has submitted a lost affidavit on at least two separate occasions and Respondent has failed to obtain a replacement certificate for the preferred shares. Claimant further asserted that due to Respondents' failure to properly deliver all the share certificates purchased, Claimant was unable to sell the units and subsequently, the units of Technodyne became valueless.

Page Two  
AWARD  
92-00266

Respondent, Hibbard, Brown & Co., Inc. by and through their in-house counsel, Steven B. Caruso, Esq., maintained that on or about May 10, 1989 Claimant, Anthony J. Russo purchased, in connection with a public offering, 3,000 Units of Technodyne, Inc. and that on or about June 8, 1989, pursuant to Claimant's request, the Respondent notified its clearing firm, Financial Clearing & Services Corporation, to deliver to Claimant the certificates representing the components that comprised the Technodyne Units, at which time, the components were forwarded to the Claimant. Respondent further maintained that in June 1990 Claimant forwarded a letter to Respondent in which he stated, "I have not been able to find my certificate for the preferred stock... so I must assume I lost it", at which time, in response to Claimant's letter, the Respondent, through its employee, Jerry Wardell, caused the transfer agent to forward to Claimant the documentation associated with a lost certificate claim. Respondent contended that contrary to Claimant's alleged inability to liquidate the common stock, preferred stock or warrant components of said Units, the component of the Unit became separately transferable on November 10, 1989, accordingly, claimant could have at least sold the common stock of the Unit and mitigated his losses.

#### RELIEF REQUESTED

Claimant, Anthony J. Russo requested \$3,500.00 in actual damages plus interest together with attorney's fees and costs.

Respondent, Hibbard, Brown & Co., Inc. requested the claim be dismissed in its entirety and be awarded costs together with attorney's fees.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 21, 1992 and by the Respondent on March 11, 1992.

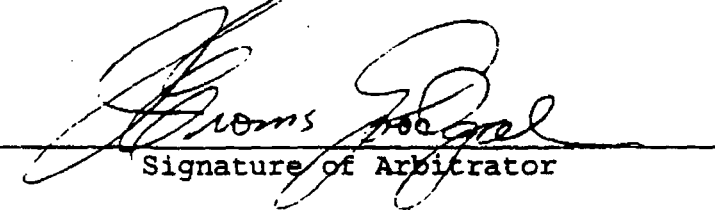
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

Page Three  
AWARD  
92-00266

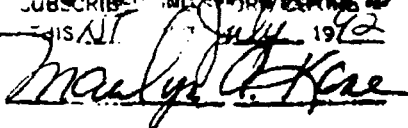
1. The claim of Claimant, Anthony J. Russo against Respondent, Hibbard, Brown & Co., Inc. is dismissed in its entirety.
2. The parties shall bear their respective costs, including attorneys' fees.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Anthony J. Russo shall be retained by the NASD, Inc.

AFFIRMATION

I, JEROME GOODGAL, 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.

  
Signature of Arbitrator

DATE OF DECISION: July 7, 1992

SUBSCRIBED AND FORWARDED BY  
WITNESSES  
  
Marilyn A. Kane

MARILYN A. KANE  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCTOBER 25, 1995