

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Isaac M. Diller

92-02337

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.  
Mark Martino

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**REPRESENTATION**

Claimant appeared Pro Se.

For Respondent Smith Barney, Harris Upham & Co., Inc. and Mark Martino:  
Linda Alpert, Esq. in-house counsel at Smith Barney.

**CASE INFORMATION**

Statement of Claim filed: July 13, 1992.

Claimant's Submission Agreement signed on: July 9, 1992.

Joint Statement of Answer filed by Respondent Smith Barney, Harris Upham & Co., Inc. and Mark Martino on: September 10, 1992.

Respondent Smith Barney, Harris Upham & Co., Inc.'s Submission Agreement signed on: September 10, 1992.

Respondent Mark Martino's Submission Agreement signed on: September 8, 1992.

**HEARING INFORMATION**

Hearing Date/Session: January 28, 1993 / One Session

Hearing Location: NASD offices located in New York City, New York.

### **CASE SUMMARY**

Claimant alleged that in November 1991 Respondent Mark Martino, employee of Respondent Smith Barney, Harris Upham & Co., Inc., phoned Claimant several times pressuring him to buy Cambridge Neuro Science, which Claimant first refused. Claimant further alleged that Respondent Martino phoned again in January 1992 and stated their analyst made a favorable report, thus Claimant purchased 2,000 shares for \$25,002.50 and asked for a copy of the analyst report, which Respondent promised to send to Claimant. Claimant further alleged that it was an almost daily struggle to get the report or alternatively to sell the stock. Claimant further alleged on March 18, 1992 a report arrived which stated no earnings were expected for six years and the company may not exist at that time. Claimant further maintained that he convinced management to sell the stock and there was a \$9,005.00 loss on the trade. Claimant further alleged that Respondent Martino later stated he told him about the six years with no earnings report.

Respondents maintained that Claimant was not pushed into buying the stock, and Claimant had the ability to reject and/or accept recommendations as he saw fit. Respondents further maintained Claimant was in complete control of his account. Respondents further asserted the following defenses: failure to state a claim, ratification, laches, waiver and estoppel and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested: \$9,005.00 in compensatory damage, plus interest.

Respondent requested: all claims be dismissed and cost be assessed against Claimant.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

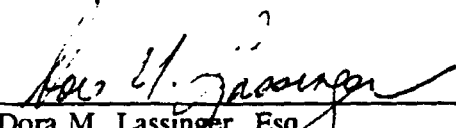
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1 session x \$75.00 = \$75.00 less \$75.00 hearing session  
deposit = \$0.00 net due.

Forum fees Assessed Against:

The NASD shall retain the \$75.00 hearing session deposit and \$75.00 filing fee previously  
deposited by Claimant.

**ARBITRATORS' SIGNATURE**

  
\_\_\_\_\_  
Dora M. Lassinger, Esq.

Execution  
Date of ~~Decision~~: 2-23-93

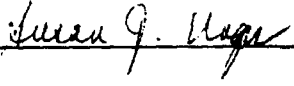
Dated by the NASD on: March 1, 1993

STATE OF: *New York*

SS:

COUNTY OF: *NEW YORK*

On this 23<sup>rd</sup> day of February, 1993, before me personally appeared Dora M. Lassinger,  
Esq., known and known to me to be the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he executed the same.

  
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SUSAN J. HAGER  
NOTARY PUBLIC, State of New York  
No. 497107  
Qualified to perform notary duties by  
Commission Expires: 12/31/94