

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration between

Gerald & Marie MAUERSBERG

v.

NASD Arbitration #92-03272

HIBBARD BROWN & Co., Inc.
John Michael GATCHELL
Joseph CHESTER

REPRESENTATION

For CLAIMANT:

F. Walter BLOOM, III, Esquire

For RESPONDENT:

Steven B. CARUSO, Esquire
[HIBBARD BROWN EVP & GENERAL COUNSEL]
for HIBBARD BROWN and Joseph CHESTER

John Michael GATCHELL [to represent himself]

CASE INFORMATION

Statement of Claim filed:

24 September 1992

CLAIMANT's Submission Agreement signed on:

24 September 1992

Statement of Answer filed by RESPONDENT, HIBBARD BROWN & Co.

4 January 1993

RESPONDENT, HIBBARD BROWN's Submission Agreement signed on:

5 January 1993

Statement of Answer filed by RESPONDENT, Joseph CHESTER on:

No Answer other than that by HIBBARD BROWN.

RESPONDENT, Joseph CHESTER's Submission Agreement signed:

22 December 1992

RESPONDENT, John Michael GATCHELL made NO RECORDED EFFORT AT AN ANSWER NOR AT A SUBMISSION AGREEMENT.

HEARING INFORMATION

Hearing Dates & Sessions:

18 May 1994: 2 sessions
19 May 1994: 1 session
19 May 1994: 1 DELIBERATION session + 3.5 hours by
telephone subsequently

Hearing Location:

WESTIN WM. PENN Hotel
530 Wm. Penn Place
Pittsburgh, Pennsylvania 15219

CASE SUMMARY

CLAIMANTS allege that:

1) John Michael GATCHELL, agent for HIBBARD BROWN, engaged in UNAUTHORIZED TRADING during September, October, and November 1991 and March 1992 in CLAIMANT's JOINT ACCOUNT, as well as in the MAUERSBERG COAL COMPANY account. The total encumbrance was approximately USD 800,000.

2) when GATCHELL left the HIBBARD BROWN Company, the replacement broker, one Steven GOODMAN, refused to follow instructions, harassed the MAUERSBERGS to buy stock they could not afford, and encouraged CLAIMANTS to sell Bonds whose dividends CLAIMANTS needed to meet living expenses.

3) Joseph CHESTER, Branch Manager, and GATCHELL applied pressure trying to force CLAIMANTS to mortgage their home to pay for the UNAUTHORIZED TRADES aggregating in excess of USD 210,000.

4) they "harassed us continually for the money."

The MAUERSBERGS state they were in touch with HIBBARD BROWN re: the UNAUTHORIZED TRADING, but the S.E.C. recommended retention of an attorney to pursue the arbitration remedy.

RESPONDENTS say:

1) they and Joseph CHESTER, through their attorney, made a collective statement denying any evidence of misconduct or impropriety in the transactions concluded between HIBBARD BROWN (John Michael GATCHELL) and the CLAIMANTS.

2) RESPONDENTS aver that the Claim is devoid of evidentiary fact, and is deficient as a matter of law -- setting forth several AFFIRMATIVE DEFENSES.

3) HIBBARD BROWN also makes a Cross Claim against John Michael GATCHELL in certain circumstances.

RELIEF REQUESTED

CLAIMANTS.

NO FORMAL CLAIM FOR RESTITUTION. In his Opening Statement, CLAIMANT's attorney asked for an Award of USD 250,000, plus interest of USD 15,000, as well as the USD 29,118 paid-out in Federal Income Taxes for the year 1991.

RESPONDENTS.

Ask the Panel to dismiss the Claim in its entirety. Also provided a Motion to Dismiss on behalf of Joseph CHESTER; and that relief be provided HIBBARD BROWN as may be deemed just, proper, and equitable under the circumstances, including restitution of expenses and attorney fees incurred defending against this Claim.

AWARD

Despite the fact that John Michael GATCHELL is no longer a Registered Representative, he was by Claim Challenge a Party to this arbitral procedure. He was notified on or about 29 March 1994 of May's Hearing dates at his Home of Record in Pittsburgh, Pennsylvania, i.e., his mother's home. The mailing was not returned for lack of proper address nor did he communicate with the NASD Staff Attorney as to rebuttal or to execute a Submission Agreement or to complain of inability to fulfill appearances on the appointed Hearing dates. Said Staff Attorney finally located him in Tidewater Virginia two days before the first Hearing date. GATCHELL responded it was an inconvenient time for him to attend, but that he might appear on the second day. The taped record will show that Mr. GATCHELL failed to appear on either day. Further, no communication attempts were apparent to either the NASD Staff or to the Panel in Pittsburgh of possible travel difficulties. Therefore, it is the judgment of this Panel that lacking a response to NASD re: the allegations; lacking evidence of attempted communications to either the NASD or to the Panel; and lacking any apparent credible defense -- rather treating the entire procedure with a cavalier attitude of indifference and inconvenience -- those negative inferences created by Mr. GATCHELL and observed by the Panel create in the Panel's mind a presumption of guilty conduct as alleged by CLAIMANTS.

As to the Hearing proper, the Arbitrators in consideration of the Pleadings, the Testimony, and the Evidence presented, hereby award, in final resolution of this case, the return to CLAIMANTS by HIBBARD BROWN & Co., Inc. of the following commission monies generated by the transaction complained of in the Claim; to wit: a total of USD 20,000.00.

Further, each Party shall pay its own attorney fees and expenses related to the Hearing of this case.

FORUM FEES

The Hearing consumed three (3) Testimony and Evidentiary sessions.

Deliberations consumed one complete session, plus three and one-half hours by telephone.

The NASD assessed the Hearing deposit at USD 1,000. Therefore, five (5) sessions x USD 1,000 = USD 5,000 which shall be divided equally among the four Parties to this Arbitration OR USD 1,250 per Party.

HIBBARD BROWN shall be required to pay its former employee's FORUM FEE share at this point.

FORUM FEES are payable to the NATIONAL ASSOCIATION OF SECURITIES DEALERS, Inc.

ARBITRATION PANEL

H. E. GERHARD, Chairman

PUBLIC

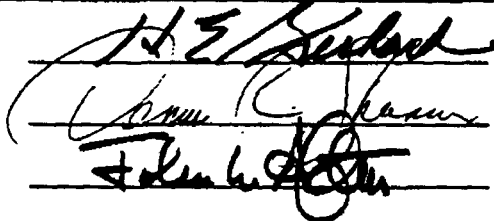
John L. AFTON, Esquire

PUBLIC

Dennis R. SHANNON

INDUSTRY

CONCURRING ARBITRATOR'S SIGNATURES



DISSENTING ARBITRATORS

~~Decision Date: xxxxxxxx June 1994 xxx~~

NASD Date of Decision: July 29, 1994