

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

James and Suzanne Sears

92-03501

Name of Respondents

Hibbard Brown & Co., Inc.  
Michael S. Blank

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 15, 1992, Claimants James A. and Suzanne M. Sears, who appeared Pro Se, alleged that they purchased 15,000 shares of Action Staffing on the recommendation of Respondent Michael S. Blank, registered representative of Respondent Hibbard, Brown & Co., Inc. Claimants further alleged that Action Staffing was already in significant financial difficulty which Respondent Michael S. Blank never told them, however, Respondent Michael S. Blank informed Claimants that Respondent Hibbard, Brown & Co., Inc. research department recommended the stock and expected substantial growth. Claimants contended that they became aware that the company was in serious financial difficulty, where<sup>by</sup> they contacted Respondent Hibbard, Brown & Co., Inc. and Respondent Michael S. Blank indicated that he was unaware of any problems and that it was just the general economy. Claimants contended that Respondents did not describe any of the financial risks of the investment and they did not provide them with the responsive and relevant information which may have reduced their potential losses. Claimants further contended they purchased the stock on Respondents' recommendation and this recommendation appears to have been based on misleading or inadequate research by Respondent Hibbard, Brown & Co., Inc. which cost losses in Claimants' account.

Respondents Hibbard, Brown & Co., Inc. and Michael S. Blank, by and through their in-house counsel Steven B. Caruso, Esq., maintained that based on conversations with Respondent Michael S. Blank, Claimants James A. and Suzanne M. Sears expressed their understanding of the increased degree of risk that was associated with pursuit of potentially greater returns. Respondents further maintained that they presented every investment they recommended to

Claimants in a fair and balanced manner with both the merits and risks enumerated. Respondents contended that the Form 10-K showed that Action Staffing was in financial trouble was not discussed or presented because it was not filed until nearly three months after the purchase of the stock.

### **RELIEF REQUESTED**

Claimants James A. and Suzanne M. Sears requested \$9,377.00 in actual damages.

Respondents Hibbard, Brown & Co., Inc. and Michael S. Blank requested the claim be dismissed in it's entirety and that they be awarded such relief as may be deemed just, proper and equitable, including reimbursement of counsel fees.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Erica Colette Bushner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 9, 1992, by the Respondent Hibbard, Brown & Co., Inc. on December 16, 1992 and by the Respondent Michael S. Blank on December 15, 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:

1. The claims of Claimants James A. and Suzanne M. Sears against Respondents Hibbard, Brown & Co., Inc. and Michael S. Blank are dismissed.
2. The parties shall bear their respective costs, including counsel fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants James A. and Suzanne M. Sears shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **ERICA COLETTE BUSHNER**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:** May 18, 1993