

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edward W. Foerstel;
Dale Printing Company

93-00545

Name of Respondents

Hibbard Brown Company;
Mark Goddard

REPRESENTATION

For Claimants: Edward W. Foerstel and Dale Printing Company ("Foerstel") were represented by Richard M. Marshall, Esq. of Richard M. Marshall & Associates, P.C., located in St. Louis, Missouri.

For Respondents: Hibbard Brown Company ("Hibbard Brown") and Mark Goddard ("Goddard") were represented by Mark E. Maddox, Esq. of Coons Maddox & Koeller, located in Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed: February 12, 1993.

Claimant's Submission Agreement signed on: January 13, 1993 by Edward W. Foerstel, individually, and Edward W. Foerstel, as President, Dale Printing Company.

Statement of Answer and Affirmative Defenses filed by Respondents Hibbard Brown and Goddard on: April 26, 1993.

Respondent Hibbard Brown's Submission Agreement signed on: April 26, 1993 by B. DeJuan Stroud, Secretary, Hibbard Brown & Co., Inc..

Respondent Goddard's Submission Agreement signed on: April 26, 1993.

Claimants' Request for Leave to Amend Claim filed: August 13, 1993.

Respondents' Objection to the Claimants' Request for Leave to Amend Claim filed: August 23, 1993.

Claimants' Reply to Respondents' Objection filed: September 3, 1993.

Claimants' Amended Statement of Claim filed: September 14, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: September 22, 1993 for Two (2) sessions;
November 22, 1993 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants alleged that Respondent Goddard, while employed by or acting as an agent for Respondent Hibbard Brown, misrepresented the facts regarding several stock purchases, inducing Foerstel to purchase and hold on to the stocks. In addition, Foerstel alleged that Respondents recommended these stocks without inquiring into his investment objectives; used high pressure (Boiler Room) sales tactics in a deliberate and planned manner; violated the NASD Rules of Fair Practice; violated the Missouri Statutes of Fair Practice, R.S. Mo. 409.101 and 409.102; breached their fiduciary duty to Claimants; and committed common law fraud by their planned and executed nationwide pattern of high pressure sales tactics.

Respondents denied the material allegations of the Claim, asserting that:

1. At or prior to establishing his accounts, Foerstel provided to Goddard his personal and financial data, and discussed in detail his existing investment objectives and prior investment experience;
2. Based upon the supplied information and his desire to pursue potentially greater returns, Foerstel was determined to be suitable for investments in general, and long-term growth opportunities in particular;
3. Between August 1991 and November, 1992, Goddard presented to Foerstel a number of investment recommendations. Each recommendation was accompanied with a fair and balanced presentation of the investment's merits and risks, and Foerstel was fully informed of the investment. Foerstel accepted some

recommendations and rejected others:

4. Claimants received all required prospectuses, sales confirmations and periodic account statements, but never objected to the transactions until he read news articles he received from another broker. Claimants incorrectly alleged that a single person controlled four of the five issuers that the Claimants chose to invest in, but even if this was accurate, Claimant did not raise the issue while they were profiting from the transactions.

In addition, Respondents asserted the following affirmative defenses:

1. The claim does not state a cause of action upon which relief can be granted;
2. The claims asserted by the Claimants are barred by the doctrines of estoppel, waiver, and laches, and by Claimants' assumption of risk and failure to mitigate damages;
3. The alleged damages were caused, in whole or in part, by the conduct and acts of the Claimants;
4. The relief requested from Hibbard Brown is barred by Article III, Section 27 of the NASD Rules of Fair Practice in that a system was established and maintained to supervise the activities of registered representatives which was reasonably designed to achieve compliance with applicable securities laws and regulations, and with the rules of the NASD;
5. The relief requested is barred by the applicable statute of limitations, by state and judicial opinion and by Claimants' unclean hands.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents Hibbard Brown and Goddard for the sum of \$47,358.08 in actual damages; interest at the rate of 9% per annum from the date of their last purchase from Hibbard Brown; \$14,000.00 as attorneys' fees as provided by Missouri statute 409.411(a) R.S. Mo. (1986); and punitive damages in the sum of \$100,000.00 based upon Missouri law and the evidence of an executed pattern of fraudulent acts.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that the Respondents be awarded such relief as be deemed just, proper and equitable, including reimbursement of counsel fees incurred.

OTHER ISSUES CONSIDERED & DECIDED

On September 14, 1993, after review of the Request for Leave to Amend and all subsequent correspondence relating to the Request, the Panel determined that the Motion would be granted, but denied Respondents request for 30 days to prepare a revised answer because the factual basis of the Claims appeared the same. The Panel allowed the Respondents to request a continuance if required.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. Respondents Hibbard Brown & Co., Inc. and Mark Goddard are jointly and severally liable for and shall pay to Claimants Edward W. Foerstel and Dale Printing Company the sum of \$44,967.08 in actual damages, plus interest at the rate of 6% per annum from November 18, 1992 until the award is paid in full;
2. In addition, Respondents Hibbard Brown & Co., Inc. and Mark Goddard are jointly and severally liable for and shall pay to Claimants Edward W. Foerstel and Dale Printing Company the sum of \$60.00 as reimbursement of one-half of the \$120.00 claim filing fee;
3. The claim for punitive damages is hereby dismissed and denied in its entirety;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
5. Any relief not specifically granted is hereby denied.

OTHER COSTS

The NASD shall retain the \$400.00 postponement fee paid by Respondent Hibbard Brown & Co., Inc..

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$400.00 per hearing session = \$1,600.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously filed by the Claimants, Edward W. Foerstel and Dale Printing Company. Claimants Edward W. Foerstel and Dale Printing Company are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$400.00. Respondents Hibbard Brown & Co., Inc. and Mark Goddard are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$800.00.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Joseph W. Twombly
Joseph W. Twombly
Public Arbitrator

February 22, 1994

/s/ Pamela Cavness
Pamela Cavness
Industry Arbitrator

February 24, 1994

Dissenting Arbitrator's Signature

/s/ Keith D. Patten, Esq.
Keith D. Patten, Esq.
Public Arbitrator
Chairperson

February 25, 1994

For NASD Use Only

Date of Service of Award: 2-28-94