

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Franklin D. Perry

93-00894

Name of Respondents

Hibbard Brown & Co., Inc.
Michael J. Dayton

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 9, 1993, Claimant Franklin D. Perry, who appeared Pro Se, alleged that Respondent Michael J. Dayton of Respondent Hibbard Brown & Co., Inc. solicited him to invest in four separate transactions from the period February, 1992 through June, 1992 as follows: on February 25, 1992 Claimant purchased 1,000 shares of Gentner at 2 1/4 for a total of \$2,252.00; on March 19, 1992 Claimant purchased 500 shares of Site Based Media at 6 3/8 for a total of \$3,198.50; on April 19, 1992 Claimant purchased 250 shares of Wolf Financial at 7 1/2 for a total of \$1,877.00 and on June 16, 1992 Claimant purchased 250 shares of CCC Franchising, n.k.a Primedex, at 8 3/4 for a total of \$2,189.50. Claimant further alleged that he told Respondent Michael J. Dayton that he did not have money for speculating in growth stocks because he was considering retirement in the near future, whereby Respondent Michael J. Dayton assured Claimant that the stocks he recommended were appropriate for him, and that Claimant better act fast because the stock price would surely go up and that Claimant would miss out on profit opportunities. Claimant contended that Respondents never provided any written information about the stocks they recommended and they always insisted that Claimant had to act immediately over the phone. Claimant further contended that during the period of these transactions, he was more vulnerable than usual to high pressure salesmanship since he was on medical leave and was under a doctor's care for stress and pain caused by a herniated disk. Claimant asserted that Respondent Michael J. Dayton was relentless when he called and Claimant succumbed to the promises he made about the immediate potential of the stock. Claimant further asserted that finally he got back to work on a regular basis at which time, Respondent Michael J. Dayton called to highly recommend the purchase of UTS Immunotherapeutics whereby Claimant asked

for a prospectus and when Claimant reviewed it, he was distressed at their financial statements. Claimant further alleged that as his thinking was now clearer, he checked the prices of the stocks he previously purchased, he was shocked that they had lost so much of their value. Claimant further contended that as a result of Respondents' misleading statements as to the quality and soundness of their recommendation, and the fact that these recommendations were unsuitable, caused Claimant to incur losses.

Respondents Hibbard Brown & Co., Inc. and Michael J. Dayton, by and through their in-house counsel Steven B. Caruso, Esq., maintained that on or about February 24, 1992 the Claimant Franklin D. Perry established an account with Respondent Hibbard Brown & Co., Inc., at which time, Claimant provided Respondent Michael J. Dayton his expressed understanding of, and desire to pursue, the increased degree of risk that was associated with the pursuit of potentially greater returns whereby the Claimant was determined to be suitable for investments, in general, and long term growth opportunities in particular. Respondents further maintained that between February of 1992 and October of 1992, Respondent Michael J. Dayton presented to the Claimant a number of investment recommendations, some of which he chose to pursue and some of which, such as more conservatively oriented mutual funds, he declined whereby each and every investment recommendation was accompanied by a fair and balanced presentation as to both the investment merits and risks that were associated with each of the same and the information provided allowed the Claimant to be in a fully informed investment position. Respondents contended that in or about October of 1992, the Claimant transferred his entire portfolio to another brokerage firm and, upon information and belief, continues to own each of the securities that are now being complained of. Respondents further contended that the truth of the matter is that the Claimant chose to invest in the securities of said issuers, had the ability to follow the price movements thereof in the Wall Street Journal as well as a multiple of other publications, and had numerous telephone conversations with Respondent Michael L. Dayton. Respondents asserted that the truth of the matter is that Claimant now seeks to hide behind the veils of medical instability and unsophistication in an attempt to place Respondents in the role of guarantors rather than advisors when, all along, he understood and choose to assume the risks that were attendant to the pursuit of potentially greater gains, thus the Statement of Claim is without support, in fact or at law.

RELIEF REQUESTED

Claimant Franklin D. Perry requested \$9,508.00 in actual damages.

Respondents Hibbard Brown & Co., Inc. and Michael L. Dayton requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Anne W. Larkin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 4, 1993, by the Respondent Hibbard Brown & Co., Inc. on May 24, 1993 and by the Respondent Michael J. Dayton on May 18, 1993.

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. Respondents Hibbard Brown & Co., Inc. and Michael J. Dayton are jointly and severally liable and shall pay to the Claimant Franklin D. Perry the sum of \$6,601.25 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Franklin D. Perry shall be retained by the NASD, Inc. Respondents Hibbard Brown & Co., Inc. and Michael J. Dayton are jointly and severally liable and shall pay to the Claimant the sum of \$75.00, as partial reimbursement.

AFFIRMATION

I, ANNE W. LARKIN, ESQ., 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.



Anne W. Larkin, Esq.

DATE OF DECISION: October 6, 1993