

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michael and Gail Caprio

93-01167

Name of Respondents

**Hibbard Brown and Company, Inc.
and Daniel Grieco**

REPRESENTATION

For Claimants Michael and Gail Caprio ("Claimants") appeared L. Mifflin Hayes, Esq. of Scotch Plains, New Jersey.

For Respondents Hibbard Brown and Company, Inc. ("Hibbard Brown") and Daniel Grieco ("Grieco") appeared Steven B. Caruso, Esq. of Hibbard Brown and Company, Inc. located in New York City, New York.

CASE INFORMATION

Statement of Claim filed on March 22, 1993.

Claimants' Submission Agreement signed on January 13, 1994.

Joint Statement of Answer filed by Respondents Hibbard Brown and Company, Inc. and Daniel Grieco on May 12, 1993.

Respondent Hibbard Brown and Company, Inc.'s Submission Agreement signed on May 24, 1993.

Respondent Daniel Grieco's Submission Agreement signed on May 18, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	January 13, 1994	-	Two Sessions
	March 1, 1994	-	Two Sessions
	May 3, 1994	-	Two Sessions
	May 24, 1994	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that they opened and maintained an account with Respondent Hibbard Brown and Company, Inc. ("Hibbard Brown") until 1992, relying upon Respondent Grieco's promise that Claimants' investments would earn a minimum return of 15 to 20 percent per year if Claimants maintained their account for a two to three-year period; that during that time Claimants invested approximately \$65,000.00 into the account; and that Claimants sustained a loss of approximately \$53,000.00.

Claimants also alleged that after the purchase of 5,000 Fireplace Manufacturers Inc. warrants for \$3,750.00, Respondent Grieco advised Claimants not to sell because the expiration date for these warrants was extended when in fact it was not, thereby making this investment worthless in April 1990; that Respondent Grieco was negligent in permitting the warrants to expire without selling as requested by Claimants and in telling Claimants that the expiration date was extended; that over a period of time Claimants purchased 3,000 shares of common stock and 1,000 units of Trans Atlantic Video, Inc. (now known as Diamond Entertainment, Inc.) for a price of \$7,939.00; and that Grieco negligently represented and induced Claimants not to sell this stock until August 1992 at which time Claimants sold the stock and sustained a loss of \$1,650.00.

Claimants further alleged that in August 1990 Respondents induced him to purchase 200 shares of Flea Fair, Inc. for \$1,400.00 by representing to him that the price of the stock would be at least \$10 per share within one year; that the stock became worthless, causing Claimants to sustain a loss of \$1,400.00; that Respondents induced Claimants to purchase a total of 6,000 shares of Holland Industries, Inc. for \$9,004.00 based on Respondents' representation that the stock price would increase to at least \$2.25 and the price of the units to \$4 by mid 1992 but that by mid-June 1992 the price declined to \$.50 per share, causing Claimants to sustain a loss of \$7,000.00; and that in October 1991 and then in July 1992 Respondents induced Claimants to purchase a total of 1,000 shares of Site Based Media for \$3,729.00 by claiming that General Electric Corporation was going to purchase this company for a substantially higher price, causing Claimants to sustain a loss of \$2,100.00. Moreover, Claimants alleged that

Respondents induced Claimants to purchase 1,175 shares of Linkon Corporation for \$5,956.00 during the period from January 22, 1991 through January 24, 1992 by claiming that AT&T was going to purchase the company for a substantially higher price, causing Claimants to sustain a loss of \$3,000.00; that during the period from February 19, 1991 through February 21, 1992, Respondents induced Claimants to purchase 2,450 shares of Nacoma Consolidated Industries, Inc. by claiming that the corporation was to acquire a substantial contract to provide services to Euro Disney, causing Claimants to sustain a loss of \$6,600.00; that in April 1992, Respondents induced Claimants to purchase 900 shares of Wolf Financial Group, Inc. for \$6,752.00 by claiming that this company's earnings would substantially increase in the near future, causing Claimants to sustain a loss of \$5,000.00; that in June 1992, Respondent induced Claimants to sell 49 units of Nuveen Trust #101-Q to secure funds to purchase 1,105 shares of CCC Franchising Corporation for \$9,532.63 by claiming that the price of the CCC stock would increase to \$12 per share by the end of 1992, causing Claimants to lose \$3,900.00; and that in February 1992, Respondents induced Claimants to purchase 4,000 shares of Gentner Communications Corporation for \$8,191.50 by claiming that there would be higher earnings and that the price would substantially increase in the near future, causing Claimants to lose \$5,187.00. In addition, Claimants alleged that over a period of time, Respondent induced Claimants to purchase 9,400 shares of common stock for \$8,500.00 and 500 shares of preferred stock for \$2,500.00 of States West Airlines by claiming that Northwest Airlines or U.S. Air was going to purchase the company for a substantially higher price, causing Claimants to sustain a loss of \$11,000.00.

Claimants also alleged that they advised Respondents that he wanted to sell all of the stocks to avoid further losses but that Respondent induced Claimants not to sell, representing in writing that there would be at least 2 to 4 winners if he held the stocks until 1993; that in reliance on this representation Claimants sustained an additional loss of \$35,000.00 as all the stocks declined in value; and that all the aforementioned conduct constituted fraud in violation of Rule 10b-5 under the Securities Exchange Act of 1934, and alternatively, negligence in inducing Claimants to purchase these stocks.

Respondents maintained that Claimants established an account with Respondents on June 14, 1988 and provided a multitude of personal and financial data; that Claimants discussed, in detail, their then existing investment objectives as well as information as to his prior investment experience and expressed an understanding of the increased degree of risk associated with potentially higher returns; that Respondent Grieco presented a number of investment recommendations accompanied with information on the merits and risks of these investments for which Claimants chose to accept or decline; and that between June of 1988 and May of 1992, Claimants chose to invest in thirteen issuers, a number of which were accompanied by the delivery of both a preliminary and final prospectus, and a number of which were subsequently liquidated at a profit. Respondents also maintained that in February of 1992 Claimants requested the

delivery of their entire portfolio and continue to own securities that are addressed in this matter.

Respondents further maintained that Claimants chose to invest in the aforesaid securities and was aware of the prices thereof through conversations with Respondent Grieco and financial newspapers and publications; that Claimants did not discuss his concerns about these investments until the subsequent prices of these securities declined -- in some instances nearly five years after the fact; and that Claimants chose to assume the risk that were associated with the pursuit of potentially higher gains.

Respondents also maintained that the Statement of Claim does not state a cause of action upon which relief may be granted. Moreover, Respondent maintained that the relief requested is barred by the doctrine of estoppel as well as the doctrine of waiver, the doctrine of laches, and the doctrine of ratification. Further, Respondents maintained that the relief requested against Respondents is also barred by Claimants' failure to mitigate damages, Claimants' assumption of the risks inherent in all securities transactions, the alleged damages were caused, in whole or part, by Claimants' culpable conduct or negligent acts, the applicable statute of limitations and/or limitations period, statute and judicial opinion, Claimants' unclean hands, and Claimants' failure to comply with Section 25(a) of the Code of Arbitration Procedure. Respondents maintained that the relief requested against Hibbard Brown is barred by Article III, Section 27, of the NASD Rules of Fair Practice.

RELIEF REQUESTED

Based upon the forgoing, Claimants requested an award against Respondents for the following:

1. An award of \$92,000 from Respondents jointly and severally;
2. Together with punitive damages; and
3. Interests and costs.

Respondents requested that the arbitration panel find in Respondents' favor as follows:

1. All claims as against Respondents be dismissed in its entirety;
2. That Respondents be awarded such relief as may be deemed just,

proper and equitable; and

3. Reimbursement of counsel fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant Michael Caprio requested that the panel permit him to amend the statement of claim to name his wife, Gail Caprio, as a claimant to this arbitration. The statement of claim sought relief for alleged losses that occurred in the joint account of Michael and Gail Caprio. Respondent had no objection to this amendment. Pursuant to Section 39(b) of the Code of Arbitration Procedure, the panel granted Claimant Michael Caprio's request to allow the claim be amended to include Gail Caprio as a claimant.

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 be and hereby are liable and shall pay, jointly and severally, to the Claimants the sum of \$15,000.00, pre-award interest specifically excluded.
2. All claims against Respondents for punitive damages be and hereby are dismissed.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$150.00 non-refundable filing fee and the following Forum Fees are assessed:

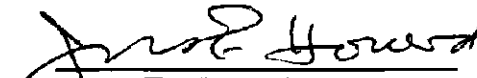
8 sessions X \$500 = \$4,000 minus hearing session deposit of 500 = net \$3,500 due.

1. Respondents be and hereby are, jointly and severally, liable and shall pay to the NASD the sum of \$3,500.00 assessed as forum fees.

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

Concurring Arbitrators' Signatures
Name

Jeffrey S. Eisenberg
Chairperson - Public Arbitrator


James E. Howard
Industry Arbitrator

Karimu F. Hill Harvey, Esq.
Public Arbitrator

Date of Decision: July 27, 1994

STATE OF *New York*

COUNTY OF *Kings*

On this 30th day of June, 1994, before me personally appeared
JAMES P. HOWARD known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.


James P. Howard
Ashvin R. Patel

ASHVIN R. PATEL
NOTARY PUBLIC, State of New York
No. 41-4789045
Qualified in Queens County
Certificate Filed in Kings County
Commission Expires September 30, 1994

1. Respondents be and hereby are, jointly and severally, liable and shall pay to the NASD the sum of \$3,500.00 assessed as forum fees.

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

Concurring Arbitrators' Signatures
Name


Jeffrey S. Eisenberg
Chairperson - Public Arbitrator

James E. Howard
Industry Arbitrator

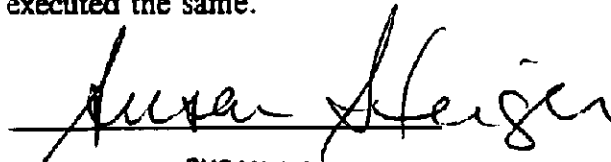
Karimu F. Hill Harvey, Esq.
Public Arbitrator

Date of Decision: July 27, 1994

STATE OF NEW YORK

COUNTY OF NEW YORK

On this 29th day of June, 1994, before me personally appeared Jeffrey S. Eisenberg known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



SUSAN J. STEIGER
Notary Public, State of New York
No. 31-4799454
Qualified in New York County
Commission Expires August 31, 19

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1. Respondents be and hereby are, jointly and severally, liable and shall pay to the NASD the sum of \$3,500.00 assessed as forum fees.

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

Concurring Arbitrators' Signatures
Name

Jeffrey S. Eisenberg
Chairperson - Public Arbitrator

James E. Howard
Industry Arbitrator



Karimu F. Hill Harvey, Esq.
Public Arbitrator

Executed on:
Date of Decision: 7/5/94
~~xxxxxxxxxx~~

Date of Decision: July 27, 1994

STATE OF *New Jersey*
COUNTY OF *Essex*

On this *5th* day of *July*, 1994, before me personally appeared *Karima F. Hill-Wood* known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Diane P. Woolridge
DIANE P. WOOLRIDGE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 18, 1995