

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Mario and Linda Mancini, JTWROS

93-01176

Name of Respondents

Hibbard Brown & Co., Inc.  
James D. Vogel

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**REPRESENTATION**

For Claimants, Mario and Linda Mancini ("Claimants"): Samuel Rosenberg, Esq. of the law firm, Benit, Weinstock & Sharbaugh located in West Orange, New York.

For Respondent, Hibbard Brown & Co., Inc. ("Hibbard Brown"): Steven B. Caruso, Esq. of Hibbard Brown, New York, New York.

For Respondent, James D. Vogel ("Vogel"): Respondent appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: March 25, 1993.

Claimant Mario Mancini's Submission Agreement signed on: March 11, 1993.

Claimant Linda Mancini's Submission Agreement signed on: March 19, 1993.

Statement of Answer filed by Respondent Hibbard Brown on: June 13, 1993.

Respondent Hibbard Brown's Submission Agreement signed on: June 14, 1993.

Statement of Answer filed by Respondent Vogel on: March 16, 1994.

Respondent Vogel's Submission Agreement signed on: Respondent Vogel did not execute a Submission Agreement as required pursuant to Section 25 of the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Prehearing Dates/Sessions: August 31, 1993 / One Session.  
October 13, 1993 / One Session.

**CASE SUMMARY**

Claimants alleged that Respondent Vogel employed pressure tactics to solicit and to induce them to open an account with him, and in turn, invested the monies in high risk stocks without their authorization. Claimants alleged that the Respondent Vogel churned their account, and placed them in a series of inappropriate stock positions. As of March 16, 1993, the Claimants maintained that the value of their stock had declined from an initial investment \$18,300 to \$8,300.

Specifically, the Claimants alleged that Respondent Vogel used pressured tactics to solicit them which caused the Claimants: to liquidate their money market certificates; to pay early withdrawal penalties on the certificates; and, to purchase risky stocks through the Respondent. Claimant Mario Mancini, who was born in Italy and earned approximately \$25,000 per year as a cabinet maker, contended he possessed only fair knowledge of the English language. Allegedly, the Claimants advised Respondent Vogel that they had only a small amount of money to invest, part of which was earmarked for their children's education, and therefore, wanted the funds invested conservatively. Moreover, the Claimants alleged that Respondent Vogel assured them that he would invest their monies in safe investments which would generate higher earnings than those on certificates of deposit, including any payments for early withdrawal penalties.

Furthermore, the Claimants alleged that Respondent Vogel purchased and sold stock from their account without consulting them. On one occasion, the Claimants alleged that Respondent Vogel told them he was selling CCC Franchising at \$10.50 per share. However, when the Claimants received the sale confirmation for CCC Franchising, it stated the stock had been sold at \$8.00 per share. Moreover, the Claimants alleged they had asked that Respondent Vogel contact them if their investments dropped in value, but allegedly, he did not comply with their request. In addition, the Claimants contended that Respondent Vogel had promised that if their investment in Immunotherapeutics did not appreciate to \$10.50 per share, then the Claimants would not have to pay for the transaction. However, Claimants alleged that Respondent Vogel neither honored his promise, nor returned their phone calls.

Finally, the Claimants alleged that Respondent Hibbard Brown had its brokers

employ intensive pressure tactics on prospective clients, and that Respondent Hibbard Brown had churned their account.

Respondent Hibbard Brown denied any misconduct or impropriety concerning the Claimants' account, and maintained that the Claimants had rejected Respondent Vogel's conservative investment suggestions. Respondent Hibbard Brown maintained that the Claimants voluntarily chose to assume the risks attendant in the pursuit of potentially greater gains. In conclusion, Respondent Hibbard Brown maintained that the Claimants failed to state a cause of action against them upon which relief may be granted; that the damages sustained by the Claimants were caused by their own culpable conduct and negligent acts; and, that the Claimants' relief requests were barred by the statute of limitations and by their failure to comply with Section 25(a) of the Code of Arbitration Procedure.

Respondent Vogel maintained that Claimant Mario Mancini, who had resided in and operated an established business in the United States for twenty-five years, possessed a thorough command of the English language, while his wife, Claimant Linda Mancini, was American born. Furthermore, Respondent Vogel maintained that the Claimants had purchased stock on previous occasions, and that during the times he had extensive conversations with the Claimants, they had given no indication that considered the manner in which he had presented himself and his products as "high pressure." Moreover, Respondent Vogel contended that he had relied on sales tactics of Respondent Hibbard Brown, from which he resigned his position on February 2, 1993. In addition, Respondent Vogel maintained that the Claimant Mario Mancini ran a predominately cash business from which he only wanted to declare a limited income.

In response to Claimants' allegations that he advised them to cash in their certificates of deposits, Respondent Vogel maintained that he had established custodial accounts for their children's education and invested the monies in mutual funds such as Aim, Putnam and Phoenix. With respect to the transaction involving CCC Franchising, Respondent Vogel maintained that since it was a joint account, Claimant Linda Mancini authorized the transaction while her husband was out of the country. Moreover, Respondent Vogel maintained that Claimant Mario Mancini was made fully aware of the transaction upon his return.

In connection with the Immunotherapeutics transaction, Respondent Vogel maintained that he had informed the Claimants that it was a new issue, and that he had neither promised nor predicted any future performance on the stock. In summary, Respondent Vogel maintained that he did not misrepresent, churn, execute transactions without proper authorization, or misquote stock prices to the Claimants.

**RELIEF REQUESTED**

Claimants requested awards against the Respondents as follows:

1. Compensatory damages in the amount of \$10,000;
2. Punitive damages in the amount of \$90,000; and
3. Payment of attorney's fees and costs.

Respondent Vogel denied all allegations and requested the arbitration panel find in his favor. Respondent Hibbard Brown requested that the Statement of Claim be dismissed in its entirety, and that the arbitration panel award the respondent firm relief and reimbursement for counsel fees.

**OTHER ISSUES CONSIDERED & DECIDED**

Claimants and Respondent Hibbard Brown reached a settlement agreement as to Claimants' claims against Respondent Hibbard Brown prior to the arbitration hearing. The Claimants requested that their remaining claims against Respondent Vogel be submitted to a single arbitrator who would decide the matter upon the pleadings submitted.

**AWARD**

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

1. Respondent Vogel be and hereby is liable and shall pay to the Claimants the sum of \$1,875, plus interest from date of purchase to present.
2. Claimants' claim for punitive damages is hereby dismissed.
3. Respondent Vogel be and hereby is liable and shall pay to the Claimants the sum of \$380.
4. Each party shall bear his own respective costs and attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee is assessed.

Nonrefundable filing fee = \$150.

Prehearing Session Fee (2 sessions X \$300) = \$600.

Total Forum Fees = \$750.

1. Claimant is assessed: \$150 nonrefundable filing fee.  
\$120 hearing session fee (20 percent  
of \$600 hearing session fee).

Claimant deposited with the NASD the sum of \$650. The NASD shall retain the nonrefundable filing fee of \$150 and hearing session deposit of \$500 paid by Claimants.

2. Respondent Vogel is assessed \$100. Respondent Vogel be and hereby is liable and shall by pay to the NASD the sum of \$100.

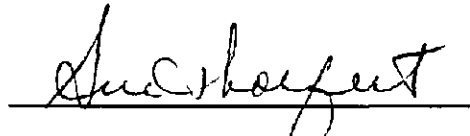
Award #93-01176

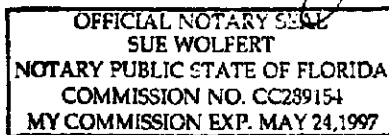
STATE OF:

SS:

COUNTY OF:

On this 3 day of August, 1994, before me personally appeared **Robert D. Herschman, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.





Page 6

Award #93-01176

Arbitrator's Signature

Handwritten signature of Robert D. Herschman in cursive script.

Robert D. Herschman, Esq.  
Chairperson, Public Arbitrator

Date of Decision: August 9, 1994