

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David W. Virtue

93-01752

Name of Respondent

Albert J. Ford

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 3, 1993, Claimant David W. Virtue, who appeared Pro Se, alleged that on April 9, 1992 he was approached by Respondent Albert J. Ford of Hibbard Brown & Company, Inc., first by phone and then on a visit to his home with a proposal that Claimant buy 500 shares of stock in a company called Wolf Financial Group, Inc. by assuring him repeatedly that this was a "safe" stock to buy with short term prospects based on the fact that this brokerage company traded small cap stocks and "had nowhere to go but up", at which time, Claimant purchased 500 shares at 7.50 per share for a total cost of \$3,750.00, which was paid for out of Claimant's equity line of credit at Freedom Valley Bank, whereby this was not discretionary money and the subsequent loss has placed his home in serious jeopardy. Claimant further alleged Respondent informed him that by June, he would see the stock appreciate enough to sell at a profit; however, almost immediately the stock began to plummet from \$7.50 a share to \$4.50 and thence downwards where it sits today at \$1.25 a share. Claimant contended that within a matter of weeks of his purchasing the stock, articles began to appear in the Philadelphia Inquirer newspaper about a certain Mr. Brennan and his relationship with Wolf Financial and Hibbard Brown & Company, Inc. whereby when Claimant confronted Respondent with these articles he assured Claimant that there was "nothing to worry about" and that Wolf Financial was a "safe stock". Claimant further contended that as time passed the stock began to sink with newer revelations about the relationship between Brennan, Hibbard Brown and Wolf Financial, at which time, Claimant questioned Respondent as to why he recommended the stock and Respondent's reply was, "just wait it will turnaround". Claimant asserted that prior to the Wolf Financial stock transaction Respondent also urged him to buy 500 shares of Digital Products Corps at \$12.00 for a total cost of \$6,000.00 by assuring Claimant the stock was "safe" and the warrants attached to them

"excellent", whereby Respondent told Claimant he planned to sell the warrants by November 1992; however, Claimant slowly watched as the value of the stock and warrants plunged. Claimant further asserted that on March 25, 1992 Respondent indicated that Claimant should sell this stock at a small loss to buy yet another stock called UTS Highline with warrants attached, at which time, Claimant purchased the stock for a total cost of \$5,777.00. Claimant further alleged that the Digital Products Corp stock was sold at a loss and like the Wolf Financial stock, the stock and warrants on the UTS Highline plunged over the next few months. Claimant further contended Respondent's "boiler-room" tactics and misrepresentations, caused him to sustain financial losses.

Claimant further asserted a Motion to Preclude Respondent's Statement of Answer pursuant to the NASD Code of Arbitration Procedure.

Respondent Albert J. Ford, by and through his counsel Steven B. Caruso, Esq. of Hibbard Brown & Company, Inc., maintained that on or about February 4, 1992 the Claimant David W. Virtue established an account at Hibbard Brown & Company, Inc. through registered representative Respondent Albert J. Ford, at which time, Claimant had discussed, in detail, his then existing investment objectives as well as information as to his prior investment experience and level of sophistication whereby based on Claimant's expressed understanding of, and desire to pursue, the increased degree of risk that was associated with the pursuit of potentially greater returns, the Claimant was determined to be suitable for investments, in general, and long-term growth opportunities. Respondent further maintained that between February of 1992 and March of 1993, he presented to the Claimant a number of investment recommendations, some of which he chose to pursue and some of which he declined. Respondent contended that 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. Respondent further contended that the Digital Products Corp. purchase made by the Claimant was preceded by the delivery of both a preliminary and final prospectus which fully set forth all of the material investment considerations, including an extensive dissertation of the risk factors. Respondent asserted that Highline Industries, Inc., the second purchase made by Claimant through Respondent and is being complained about of for the omission as to the expiration dates of the warrants, was not only verbally confirmed to the Claimant, but was also confirmed to him in writing on his purchase confirmation and subsequent account statements. Respondent further asserted that the Wolf Financial Group, Inc., which was the final purchase made by the Claimant and is being complained of for the omission as to the legal proceedings disclosed in the Company's Form 10-K for the period ended June 30, 1992, is negated by the fact that the Claimant purchased the same on April 10, 1992 and the document was not even publicly released until some time after September 24, 1992. Respondent further alleged that the Statement of Claim is without support, in fact or at law, and should be dismissed.

RELIEF REQUESTED

Claimant David W. Virtue requested \$9,754.00 in actual damages together with \$2,500.00 in Punitive damages.

Respondent Albert J. Ford requested the claim be dismissed in its entirety and that the Respondent be awarded such relief as may be deemed just, proper and equitable under the circumstances 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, Robert F. Sanville, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 27, 1993 and by the Respondent on August 4, 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. The Claimant's Motion to Preclude Respondent's Statement of Answer is denied.
2. Respondent Albert J. Ford is liable and shall pay to the Claimant David W. Virtue the sum of \$9,752.00 in damages.
3. The Claimant David W. Virtue, upon receipt of payment of the award, shall turn over to Respondent Albert J. Ford, in negotiable form, 500 shares of Wolf Financial Group, Inc. and 1,000 UTS Highline Inds. Inc.
4. The Claimant's request for Punitive damages is denied.
5. The parties shall bear their respective costs, including counsel fees.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David W. Virtue shall be retained by the NASD, Inc. Respondent Albert J. Ford is liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, **ROBERT F. SANVILLE**, 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.



Robert F. Sanville

DATE OF DECISION: September 23, 1993