

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jay K. and Mary C. Desch

93-02020

Name of Respondent

Hibbard Brown & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 20, 1993, Claimants Jay K. and Mary C. Desch, who appeared Pro Se, alleged that Mr. McAlexander, an employee and representative of Respondent Hibbard Brown & Co., Inc. used high pressure sales tactics to coerce Claimant into buying stock. Claimants also alleged that he purchased stock in Truvel, Greystone, Trans Atlantic Video, Chefs International and First National Realty. The Claimants further alleged that Mr. McAlexander provided over inflated estimates of a stock's potential and suggested any possible means to pay for the stock, such as taking out cash advances on credit cards. The Claimants contended that Mr. McAlexander willfully misused the trust begotten by the position for which he was hired, manipulated the available information and mismanaged the personal funds, all the time knowing the eventual outcome would be a financial loss to his customer and that, therefore the Claimant should be compensated for his loss.

Respondent Hibbard Brown & Co., Inc., through its in-house counsel, Steven Caruso, Esq., maintained that Claimants provided financial data and investment objectives at or prior to the establishment of their account and that Claimants were determined to be available for investments in long-term growth opportunities. The Respondent further maintained that each and every investment recommendation made to the Claimants was accompanied by a fair and balanced presentation as to the investment merits and associated risks. The Respondent contended that Claimants chose to invest in the stocks in question, knowing full well that there were increased degrees of risk associated with potentially greater returns and did not discuss any concerns relative to these investments in numerous conversations with their representatives until the prices declined. Respondent further maintained that Claimants are attempting to have Respondent held responsible for the market performance of these investment portfolio, not withstanding the net profits that they realized.

RELIEF REQUESTED

Claimants Jay K. and Mary C. Desch requested a rescission of their purchases of Truvell, Graystone, Trans Atlantic Video (or DMEL) and First National Realty with the funds totalling \$4,535.00 to be refunded to Claimants, plus interest from January 1990 to present, and punitive damages in the amount of \$3,000.00.

Respondent Hibbard Brown & Co., Inc. requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded such relief as may be deemed just, proper and equitable under the circumstances, including reimbursement of attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Murray S. Levin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 17, 1993 and by the Respondent on August 5, 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. Respondent Hibbard Brown & Co., Inc. is liable and shall rescind the purchase of the shares still owned by Claimants Jay K. and Mary C. Desch. Pursuant to this rescission, Claimants are entitled to \$704.00 and shall return and assign back to Respondent all shares of Truvell, Greystone, Trans Atlantic and First National Realty and/or successors.
2. Claimants' request for interest is hereby denied.
3. Respondent Hibbard Brown & Co., Inc. is hereby liable and shall pay to Claimants Jay K. and Mary C. Desch punitive damages in the amount of \$2,000.00 based on fraud according to the common law of the State of Kansas.
4. The parties shall bear their respective costs, including attorney's fees.
5. The \$150.00 filing fee deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Hibbard Brown & Co., Inc. is liable and shall pay \$150.00 to the Claimants as reimbursement of the filing fee.

AFFIRMATION

I, MURRAY S. LEVIN, 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.

A handwritten signature in cursive script, appearing to read "Murray S. Levin", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: July 8, 1994