

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Christine A. Alulis  
Clement V. Alulis  
Matthew F. Alulis

93-02091

Name of Respondents

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

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REPRESENTATION

For Claimants Christine A. Alulis, Clement V. Alulis and Matthew F. Alulis (hereinafter collectively referred to as "Claimants") appeared Arthur J. Kyriazis, Esq., PA.

For Respondent Hibbard Brown & Co., Inc. ("Hibbard Brown") appeared Steven B. Caruso, Esq., Executive Vice President and General Counsel of Hibbard Brown & Co., Inc., New York, NY.

Respondent Michael J. Ozga did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed with the NASD on May 25, 1993 and the Submission Agreement, which was signed by each claimant, was executed on June 10, 1993.

Respondent Hibbard Brown filed a Statement of Answer on August 13, 1993 and executed their Submission Agreement on August 12, 1993.

Respondent Ozga did not file a Statement of Answer and did not file a Submission Agreement.

### HEARING INFORMATION

The hearing was held at the NASD, Inc. offices located at 1818 Market Street, Philadelphia, PA. on August 30, 1994 and lasted two sessions.

### CASE SUMMARY

Claimants alleged that in or about November, 1991, Claimant Christine Alulis met with Mike Ozga ("Ozga"), who identified himself as an account executive at Hibbard Brown. Claimants also alleged that Ozga discussed a company called Site Based Media ("Site") with Christine Alulis; that Ozga stated that Hibbard Brown estimated that Site stock would be worth \$32.00 per share within a year; and that at this meeting, Ozga and Christine Alulis discussed Claimants' investment goals. Claimants further alleged that Ozga was advised that Claimants could not afford to lose any money; that Ozga stated he would put one-third of the money into one mutual fund, one-third into another mutual fund, \$5,000.00 into a "zero to ten year bond", and the remaining \$5,000.00 into various stocks; and that Ozga was instructed to buy 300 shares of Site in the name of Christine Alulis and 100 shares of Site for each of her two sons, Clement and Matthew.

Further, Claimants alleged that in or about December, 1992, Ozga advised Claimants that there would be a change in the way Claimants' funds would be invested. Later that same month, Claimants allegedly received confirmations which showed that Ozga had purchased 1,500 shares of Site on December 18, 1992 and another 500 shares on December 19, 1992 and another 325 shares on December 23, 1992, for Claimants' accounts.

In or about April 1992, Ozga allegedly called Claimant Christine Alulis and recommended that Claimants purchase shares of Wolf Financial ("Wolf") as a short term investment and guaranteed Claimants would make \$3.00 to \$3.50 per share in profits. Furthermore, in or about August 1992, Claimants advised Ozga that they wanted to sell their Wolf stock, as well as their positions in CCC Franchising and United States Transportation Systems. Ozga allegedly advised Claimants to hold on to these stocks until the last minute, and that when sold a check could be sent in four days. Additionally, Claimants alleged that on September 1, 1992, Ozga phoned and recommended that Claimants hold on to their Site stock because he believed that Hibbard Brown was going to "push it" one more time; that Ozga advised that if the value of Site stock did not go up by the end of September Claimants should sell; and that Claimants sold all of their stock at this time.

Respondent Hibbard Brown denied all allegations of wrongdoing asserted in the Statement of Claim and submitted that the claim is devoid of evidentiary fact and deficient as a matter of law.

Respondent maintained that on or about November 22, 1991, Claimants established the first of four accounts through the branch office of Hibbard Brown and registered representative Ozga. Further, Respondent Hibbard Brown maintained that at or prior to the establishment of each account, Claimants had provided Ozga with a multitude of personal and financial data. Respondent Hibbard Brown also maintained that Claimants had discussed, in detail, their then existing investment objectives as well as information as to their prior investment experience and level of sophistication.

Moreover, Respondent Hibbard maintained that between November of 1991 and August of 1992, Ozga presented to the Claimants a number of investment recommendations, some of which they chose to pursue and some of which they declined; that Claimants chose, through a series of purchase transactions, to invest in a diverse portfolio of common stocks and mutual fund investments; and that Claimants chose to invest in the securities of said issuers knowing full well that there were increased risks associated with the pursuit of potentially greater returns.

Respondent Hibbard Brown asserted as affirmative defenses that the Statement of Claim did not state a cause of action against Hibbard Brown upon which relief may be granted; that the relief requested therein is barred by the doctrines of waiver, estoppel, laches and ratification; that the relief requested is barred by Claimants failure to mitigate their damages and by Claimants' assumption of the risks inherent in all securities transactions; and that the damages allegedly sustained by the Claimants were caused, in whole or in part, by the culpable conduct or negligent acts of commission and/or omission of said Claimants. As for additional affirmative defenses, Hibbard Brown asserted that the relief requested against Hibbard Brown is barred by Article III, Section 27, of the NASD Rules of Fair Practice; is barred by the applicable Statute of Limitations; is barred by statute and judicial opinion; is barred by the Claimants' unclean hands; and is barred by the Claimants' failure to comply with Section 25(a) of the Code of Arbitration Procedure.

#### **RELIEF REQUESTED**

At the hearing, Claimants requested an award against the Respondents, jointly and severally, in the sum of \$19,597.00, together with attorney's fees, costs, interest and any other damages deemed appropriate.

Respondent Hibbard Brown requested that the Statement of Claim be dismissed in its entirety and that Hibbard Brown be awarded such relief as may be deemed just, proper and equitable under the circumstances including reimbursement of counsel fees involved herein.

**OTHER ISSUES CONSIDERED & DECIDED**

The panel made the following rulings as to Respondent Ozga who failed to file a Statement of Answer, failed to file a properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement) and failed to appear at the Evidentiary hearing conducted in this matter without obtaining any adjournment/ postponement thereof:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Ozga.
2. The panel found that Ozga was a person associated with an NASD member namely, Hibbard Brown at the time this controversy arose. Consequently, the panel found personal jurisdiction over Ozga pursuant to Section 12(a) of the Code. Additionally, Ozga executed a Form U-4 requiring him to arbitrate at this forum upon demand of the Customer Claimants.
3. In view of (2) above, Ozga was required to execute and file with the NASD a submission agreement pursuant to Section 25 (b) of the Code. In this regard the panel found that the NASD properly served the Claimants' claims upon Ozga pursuant to Section 25 (a) of the Code.
4. Finally, the panel found that the NASD, pursuant to Sections 21 and 26 of the Code, provided Ozga with notice of all hearings conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with these hearings without Ozga.

**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. Respondents Hibbard Brown and Ozga be and hereby are jointly and severally liable and shall pay to Claimant Christine A. Alulis the sum of \$10,826.00, interest specifically excluded.
2. Respondents Hibbard Brown and Ozga be and hereby are jointly and severally liable and shall pay to Claimant Matthew F. Alulis the sum of \$1,053.00, interest specifically excluded.
3. Respondents Hibbard Brown and Ozga be and hereby are jointly and severally liable and shall pay to Claimant Clement V. Alulis

the sum of \$7,231.00, interest specifically excluded.

4. All other claims be and hereby are dismissed.
5. All claims for attorney's fees be and hereby are dismissed.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the following Forum Fees are assessed:

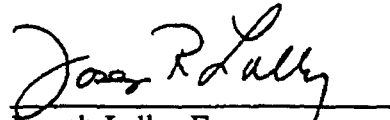
2 sessions X \$200 = \$400 minus hearing session deposit of 200 = net \$200.00 due.

1. Claimants be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$200.00 representing one-half of the outstanding forum fees. However, Claimants previously deposited \$200.00 with the NASD. Therefore, the amount due from the Claimants is \$0.
2. Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$200.00 representing one-half of the outstanding forum fees.

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

Arbitrator's Signature

Name



Joseph Lally, Esq.

Chairperson - Public Arbitrator

Executed on:  
Date of Decision: ~~October 26, 1994~~

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