

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Craig Goshaw

93-02141

Name of Respondents

Hibbard Brown & Co., Inc.  
Kevin Thomas Johnson

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on May 28, 1993, Claimant Craig Goshaw, who appeared Pro Se, alleged that in late April to early May 1992 he received an unsolicited phone call from Respondent Kevin Thomas Johnson of Respondent Hibbard Brown & Co., Inc. asking if he would be interested in investment opportunities with Respondent Hibbard Brown & Co., Inc. whereby Claimant said he would give it consideration, so Respondent Kevin Thomas Johnson sent him a pamphlet describing the firm and subsequently about a week later Respondent Kevin Thomas Johnson called again to inquire if Claimant was interested in research Respondent Hibbard Brown & Co., Inc. was conducting, at which time, Claimant told Respondent Kevin Thomas Johnson he was interested. Claimant further alleged that Respondent Kevin Thomas Johnson called back on or about May 20, 1992 to recommend the purchase of 500 shares of Digital Products Corporation at 10 1/4 whereby it was a company that Respondent Hibbard Brown & Co., Inc.'s research department highly recommended. Claimant contended that he advised Respondent Kevin Thomas Johnson that he would buy 250 shares and see how well it does, at which time, Respondent Kevin Thomas Johnson strongly recommended buying more before the price goes up and subsequently, the next morning, Respondent Kevin Thomas Johnson called to advise the Claimant that the trading volume was again heavy and that mutual funds were beginning to buy the stock whereby Claimant, believing that mutual funds were beginning to purchase the stock, purchased another 250 shares. Claimant further contended that upon receiving his confirmation notice a few days later, he observed that the date for both transactions was listed as occurring on the same day, in addition to discovering that Respondent Hibbard Brown & Co., Inc. was a market maker for the stock. Claimant asserted that a few weeks after this purchase he began researching Digital Products and found

Respondent Kevin Thomas Johnson had initially said about the company. Claimant further asserted that about a month after his initial purchase, with Digital Products now trading in the \$8.00 range. Respondent Kevin Thomas Johnson called with some new recommendations designed to diversify Claimant's portfolio, at which time, Claimant inquired about the misrepresentations of the financial health of Digital Products whereby Respondent Kevin Thomas Johnson stated that if the company was selling at a profit, Claimant wouldn't be questioning the recommendation whereby Claimant told Respondent Kevin Thomas Johnson to sell his shares and he would prefer never hearing from him again. Claimant further alleged that Respondent Kevin Thomas Johnson advised him to hold on to his shares, which he did and subsequently a few weeks later the stock was trading in the \$6.00 range, at which time, Claimant decided to take possession of his certificates to sell them through a discount broker. Claimant further contended that Respondents Hibbard Brown & Co., Inc. and Kevin Thomas Johnson grossly misrepresented Digital Products financial health and past performance, thus they should be liable for his loss.

Respondent Hibbard Brown & Co., Inc., by and through their in-house counsel Steven B. Caruso, maintained that on or about May 20, 1992 the Claimant Craig Goshaw established an account through the Palm Beach, Florida branch office of Respondent Hibbard Brown & Co., Inc. and its registered representative, Respondent Kevin Thomas Johnson, whereby, at or prior to the time of the establishment of the said account, the Claimant provided Respondent Kevin Thomas Johnson a multitude of personal and financial data including his then existing investment objectives as well as information as to his prior investment experience and level of sophistication. Respondent further maintained that based on all the preceding and his 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, in particular. Respondent contended that in May, 1992, Respondent Kevin Thomas Johnson presented to the Claimant an investment recommendation in the common stock of Digital Products Corp., which was accompanied by a fair and balanced presentation as to both the investment merits and risks. Respondent further contended that the information provided allowed the Claimant to be a fully informed investment position whereby, Claimant authorized the purchase of an aggregate of 500 shares at a price of \$10.25. Respondent asserted that the Claimant, through the exercise of poetic license, now seeks to compel Respondent Hibbard Brown & Co., Inc. to compensate him for the losses that he sustained in connection with Digital Products Corp. under the unsupportable and conclusory guise that there were several misrepresentations and/or omissions made by Respondent Kevin Thomas Johnson which were discovered by the Claimant "a few weeks" thereafter. Respondent further asserted that the truth of the matter is that the above stated purchase order was effectuated with the prior knowledge, consent and permission of the Claimant, the Claimant was made aware of and affirmatively acknowledged that he understood the risks, and the Claimant waited until the price declined to first voice his concerns, thus the claim should be dismissed.

Respondent Kevin Thomas Johnson failed to file an Answer to the Statement of Claim.

### **RELIEF REQUESTED**

Claimant Craig Goshaw requested the sum of \$6,257.00 in actual damages and the sum of \$660.00 in costs.

Respondent Hibbard Brown & Co., Inc. requested the claim be dismissed in its entirety and they be awarded such relief as may be deemed just, including reimbursement of counsel fees.

Respondent Kevin Thomas Johnson failed to file an Answer to the Statement of Claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Kevin Thomas Johnson was served a copy of the Statement of Claim by regular mail on August 5, 1993 and given an opportunity to respond, which he failed to do so.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Kevin Thomas Johnson was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jacque E. Foust, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 24, 1993, by the Respondent Hibbard Brown & Co., Inc. on July 19, 1993 but not by the Respondent Kevin Thomas Johnson as required by Sections 12 & 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure.

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 pay to the Claimant Craig Goshaw the sum of \$2,635.00 in damages.
2. The claim of Claimant Craig Goshaw against Respondent Kevin Thomas Johnson is dismissed without prejudice.

3. The parties shall bear their respective costs, including counsel fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Craig Goshaw shall be retained by the NASD, Inc. Respondent Hibbard Brown & Co., Inc. is liable and shall pay to the Claimant Craig Goshaw the sum of \$150.00, as reimbursement.

**AFFIRMATION**

I, JACQUE E. FOUST, 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.

  
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Signature of Arbitrator

DATE OF DECISION: December 15, 1993