

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robert G. Dingey and  
Mary Alice Dingey

93-02164

Name of the Respondent

Hibbard Brown &  
Company, Inc.,

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Representation

For the Claimant Robert and Mary Alice Dingey ("Claimants"):  
Ronald D. Barber, Esq. of Straussburger McKenna Gutnick & Potter,  
of Pittsburgh, Pennsylvania.

For the Respondent Hibbard Brown & Company, Inc.  
("Respondent"): Steven B. Caruso, Esq. of Hibbard Brown

Case formation

Statement of Claim filed : May 27, 1993  
Claimant's Submission Agreement signed on: May 25, 1993.

Statement of Answer filed by Respondent on: July 15, 1993  
Respondent's Submission Agreement signed on: August 12, 1993

Hearing Information

Pre-Hearing Date/Session	April 18, 1994 -	One Session
Hearing Date/Sessions:	May 12, 1994 -	Two Sessions

The hearing was conducted at the William Penn Hotel located in  
Pittsburgh, Pennsylvania

### Case Summary

Claimants alleged that on February 21, 1992, the Respondent sold to the Claimants 10,000 shares of NCCI stock, which the Claimants subsequently sold 1,000 shares of, on March 23, 1992.

Furthermore, the Claimants alleged that the Respondent represented to them that the investment was to be a low risk, safe and a potentially highly profitable investment. However, the Claimants alleged that the Respondent failed to warn the Claimants as to the true nature of NCCI, which they alleged was an extremely risky investment.

Moreover, Claimants alleged that the Respondent failed to determine whether NCCI was a suitable investment for the Claimants. Claimants alleged that this is evident due to the fact that they are highly risk averse, while NCCI is an extremely speculative investment.

In addition, the Claimants alleged that the Respondent failed to include the market price or value of their securities on the account statements, which the Claimants received from the Respondents.

Finally, Claimants also alleged that immediately upon becoming aware of the decline in value of their investment, the Claimants contacted the Respondent and requested that the Respondent liquidate the Claimants position in NCCI; that the Respondent refused to immediately sell the Claimants' shares of NCCI, choosing to ignore the Claimants' instructions; that as a result of the Respondent's delay in selling NCCI, the Claimants were unable to liquidate their position in NCCI until the value of the Claimants' investment had declined to \$1,800 dollars.

Respondent denies all allegations of wrongdoing and maintained that the Claimants were merely attempting to hold the Respondent accountable for market forces. Moreover, Respondent maintained that they had requested and received full documentation from the Claimants, regarding personal and financial data and prior investment experience and sophistication. Furthermore, the Respondent contended that the Claimants were made aware of and understood the risks inherent in their investments.

In addition, Respondent asserted that the Statement of Claim did not state a cause of action upon which relief may be granted; any request for relief is barred by the doctrines of estoppel, waiver, laches and ratification; also, the Claimants had failed to mitigate their damages; the Claimants were barred from recovery due to assumption of risk inherent in securities investments; any damages were the result of the negligent actions or omissions of the Claimants; and finally, any requests for relief are barred by Article III, Section 27 of the NASD Rules of Fair Practice, the statute of limitation, by statute and judicial

opinion, by Claimant's unclean hands and by Claimant's failure to comply with Section 25(a) of the Code of Arbitration Procedure.

#### RELIEF REQUESTED

Claimants Requested:

1. The sum of \$34,200 dollars in compensatory damages and interest thereon;
2. That punitive damages be assessed against the Respondent;
3. That the Respondent should bear all arbitration costs;
4. That the Respondent should bear the Claimants' attorney fees; and
5. Such other relief as the arbitrators deem fit.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

#### AWARD

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

1. The Panel enters its Award in favor of the Claimant and against the Respondent in the amount of \$6,000.00 dollars, with interest charges to begin accruing from the date of this decision until date of payment.
2. The Claimants shall bear their own attorney's fees.
3. All other claims against the Respondent shall be dismissed with prejudice.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has determined that the following Forum Fees are assessed. Furthermore, the Panel has determined that the Claimant shall bear the cost of the assessed Forum Fees, to be paid to the NASD.

2 sessions X \$400.00 dollars per session = \$800.00 dollars.  
Pre-hearing telephone conference = \$300.00 dollars. ,  
total cost = \$1,100.00 dollars

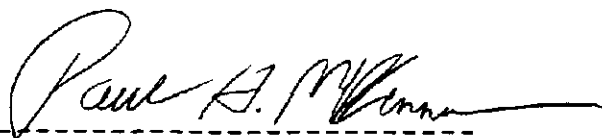
#### Balance

session costs	=	\$1,100.00
less hearing deposit	=	\$400.00
balance due		\$700.00 dollars

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

Concurring Arbitrators' Signatures  
Name

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A. Ralph Ellis, Esq.  
Chairperson - Public Arbitrator

  
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Paul H. McKenna  
Industry Arbitrator

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William T. Duboc  
Public Arbitrator

Date of Decision: July 21, 1994

Concurring Arbitrators' Signatures  
Name

A. Ralph Ellis

A. Ralph Ellis, Esq.  
Chairperson - Public Arbitrator

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Paul H. McKenna  
Industry Arbitrator

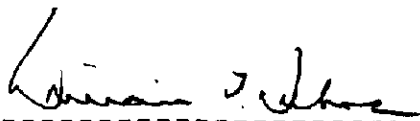
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