

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimants

Rajiv and Sylvia Enand

93-02457

Name of RespondentsHibbard Brown & Co., Inc.
Joseph Francis Chester

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 22, 1993, Claimants Rajiv and Sylvia Enand, who appeared Pro Se, alleged that on the night of March 21, 1991, Respondent Joseph Chester, of the Pittsburgh office of Respondent Hibbard Brown & Co., Inc. called them regarding the purchase of securities, at which time Respondent indicated that he had "just gotten off the phone with their research staff in New York and that a company named Trans Atlantic Video, Inc. was poised for substantial growth when they signed a deal with Walt Disney the next day". Claimants further alleged that Respondent Joseph Chester said the stock was trading at 1 3/4 and that he could only hold that price until early the next morning, at which time Respondent Joseph Chester also indicated that the research staff was making a recommendation not to sell even if the stock hit 4, in a couple of days because they felt it could hit 8. Claimants contended that all that evening, Respondent Joseph Chester continued to stress the potential without once discussing the downside and gave little information on the company, other than a thumbnail sketch, whereby Respondent Joseph Chester never once mentioned that this company was traded only once a week on the over the counter market and was thus a higher risk venture than other stocks. Claimants further contended that they indicated that they had a fairly conservative investing strategy dealing mostly in blue chips stocks and mutual funds, at which time, Respondent Joseph Chester never responded to whether this security fit that profile. Claimants asserted that they finally agreed after much persuasion to purchase 5,000 shares of Atlantic Video, Inc. and when they later checked what the stock was trading at, Respondent Joseph Chester indicated 1 1/4 whereby the stock they bought was from Hibbard Brown & Co., Inc. and not on the street, meaning it was a "principal transaction". Claimants further asserted that through the entire transaction, they believe they were never given accurate information on

the company or its potential, but rather continuous hype and lies. Claimants further alleged that the stock has since merged with a company called Diamond Entertainment Corp. and is now asking around 1/4. Claimants further contended that they believe Respondents Hibbard Brown & Co., Inc. and Joseph Chester used high pressure sales tactics and deliberately overstated the potential of the company in order to get a quick sale, and never accurately stated the risk in this transaction, thus Respondents should be liable for Claimants' losses.

Respondents Hibbard Brown & Co., Inc. and Joseph Chester, by and through their in-house, Steven B. Caruso, maintained that on or about March 22, 1991, the Claimants Rajiv and Sylvia Enand established an account through the Pittsburgh, Pennsylvania branch office of Respondent Hibbard Brown & Co., Inc. and Registered Representative Joseph Chester whereby at or prior to that time of the establishment of the said account, the Claimants had provided to Respondent Joseph Chester a multiple of personal and financial data which included, but was not necessarily limited to, their ages, occupations, social security numbers, annual income and substantial level of net worth. Respondents further maintained that the Claimants had discussed, in detail, their then existing investment objectives as well as information as to their prior investment experiences and level of sophistication, at which time, based on all of the preceding and their expressed understanding of, and desire to pursue, the increased degree of risk that was associated with the pursuit of potentially greater returns, the Claimants were determined to be suitable for investments, in general, and long-term growth opportunities, in particular. Respondents 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 Claimants to be in a fully informed investment position, whereby between March, 1991 and July, 1991, Claimants chose to invest in the securities of two issuers, namely Trans Atlantic Video, Inc. and Highline Industries, Inc. Respondents further contended that in connection with the Claimants' purchase of Highline Industries, Inc., the Claimants received both a preliminary and final prospectus which fully set forth all of the risks and the stock was subsequently liquidated at an annualized profit of approximately sixty percent. Respondents asserted that in connection with the Claimants' purchase of Trans Atlantic Video, Inc., the Claimants purchased an aggregate of 5,000 shares at \$1 3/4. Respondents further asserted that the Claimants, through the exercise of poetic license, imply by omission that they were satisfied with Respondent Joseph Chester and their approximate annualized profit of 60% on Highline Industries, Inc. but affirmatively state that they were not satisfied with the unrealized loss that has been incurred on Trans Atlantic Video, Inc. Respondents further maintained that the truth of the matter is that each and every purchase order was effectuated on behalf of the Claimants with their prior knowledge, consent and permission. Respondents further contended that while the Claimants may believe that they are entitled to keep the profits and recover the losses that they allegedly sustained, the fact remains that no evidence of misconduct or impropriety existed at the time that the securities were sold to them and no evidence of misconduct or impropriety exists at the present time to warrant consideration of the relief requested.

Respondents Hibbard Brown & Co., Inc. and Joseph Chester asserted a Motion to Dismiss the Statement of Claim pursuant to the provisions of Section 12(d)(2) of the NASD Code of Arbitration Procedure, by virtue of the fact that Claimants are members of a putative class action that is pending in the United States District Court for the District of New Jersey, the claim is ineligible for arbitration.

Claimants Rajiv and Sylvia Enand replied to Respondents' Motion to Dismiss by stating that they are not plaintiffs in the class action suit referred to by Respondents, thus the Motion to Dismiss should be denied.

RELIEF REQUESTED

Claimants Rajiv and Sylvia Enand requested the sum of \$8,754.00 together with interest for 2 years at the rate of 7% per annum.

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

OTHER ISSUES CONSIDERED & DECIDED

The Respondents Hibbard Brown & Co., Inc. and Joseph Chester Motion to Dismiss pursuant to the provisions of Section 12(d)(2) of the NASD Code of Arbitration Procedure is denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert N. Sughrue, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 3, 1993, by the Respondent Hibbard Brown & Co., Inc. on July 30, 1993 and by the Respondent Joseph Chester on July 29, 1993.

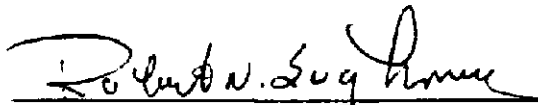
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Hibbard Brown & Co., Inc. and Joseph Chester are jointly and severally liable and shall pay to the Claimants Rajiv and Sylvia Enand the sum of \$8,754.00 in damages.

2. Respondents Hibbard Brown & Co., Inc. and Joseph Chester are jointly and severally liable and shall pay to the Claimants Rajiv and Sylvia Enand simple interest at the rate of 6% per annum from April 1, 1991 to the date of payment of the award.
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 Claimants Rajiv and Sylvia Enand shall be retained by the NASD, Inc. Respondents Hibbard Brown & Co., Inc. and Joseph Chester are jointly and severally liable and shall pay to the Claimants the sum of \$150.00, as reimbursement.

AFFIRMATION

I, **ROBERT N. SUGHRUE**, 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.


Signature of Arbitrator

DATE OF DECISION: December 14, 1993