

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Bernard J. Strassberg

93-02712

Name of Respondent

Broadcort Capital Corporation

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 12, 1993, Claimant Bernard J. Strassberg, who appeared Pro Se, alleged that during the first week of May, 1993 he had a number of telephone conversations with Donald H. Caban, managing director of Allied Capital, Inc., regarding the purchase of Hasbro, Inc. common stock ("Hasbro") and subsequently, on May 11, 1993 Claimant agreed to purchase 200 shares of Hasbro at 33 1/2 net, including commission whereby on May 13, 1993 Donald H. Caban telephoned Claimant again to ask if he would like to purchase another 200 shares of Hasbro at 33 5/8 with the provision that the price of the Hasbro stock included the commission, at which time, Mr. Caban, representing Allied Capital, Inc. agreed. Claimant further alleged that on May 21, 1993 he informed Mr. Caban that he would be sending two checks in the amount of \$6,700.00 and \$6,725.00, respectively, in full payment of the two purchases, at which time, Mr. Caban agreed to hold the check for \$6,725.00 until May 27, 1993 which was the date of the check; however, both checks were presented to Claimant's bank at the same time, thus charging Claimant's credit account in order to clear the check dated May 27, 1993. Claimant contended that when he was informed of this by his bank, he immediately tried to get in touch with Mr. Caban at Allied Capital, Inc. and subsequently called Respondent Broadcort Capital Corporation at which time, Claimant was notified that Allied Capital, Inc. was suspended by the NASD, and was out of business whereby Claimant immediately directed Respondent to sell all of his 400 shares of Hasbro at the market price of 36 7/8 per share as of May 27, 1993. Claimant further contended that on May 28, 1993 he received a letter from Respondent by Airborne Express and Claimant immediately telephoned Respondent to explain the facts to Ms. Virginia Breen, at which time, she advised Claimant to put it into writing whereby she would forward the request to sell the 400 shares of Hasbro to Respondent's Compliance Division. Claimant asserted that after

speaking to Ms. Breen, he contacted Merrill Lynch, Pierce, Fenner & Smith, Inc. and the NASD and was advised to contact Respondent by and through Mr. Elhorn Nesses, Compliance Director to request that his 400 shares of Hasbro be sold at market. at which time, Claimant contacted Mr. Nesses on May 28, 1993 and spoke to his secretary whereby Claimant told her to inform Mr. Nesses that he wanted to sell all his Hasbro shares today. Claimant further asserted that on June 1, 1993 he contacted Respondent and was informed that his request for sale of the Hasbro stock was forwarded to Respondent's Compliance Division for action whereby the price of Hasbro on June 1, 1993 was 36 1/2. Claimant further alleged that on June 3, 1993 he was advised by Respondent that the sale of his 400 shares of Hasbro were sold as follows: 7 shares sold on May 28, 1993 at 36.5 and 393 shares sold on June 2, 1993 at 35.625 whereby he instructed Respondent to sell all of his 400 shares of May 28, 1993, thus, Respondent should be liable for the difference in price and commissions charged.

Respondent Broadcast Capital Corporation by and through their counsel Aladar G. Gyimesi, Esq. of Gyimesi and Wedinger, P.C., Staten Island, NY, maintained that they have no knowledge of the circumstances or transactions alleged in the Statement of Claim with respect to Claimant Bernard J. Strassberg's dealings with Allied Capital, Inc. and specifically denied any liability for same. Respondent further maintained that they act as a clearinghouse with respect to purchase and/or sale of stock or bonds and it is the ordinary and accepted business practice for Respondent to earn a commission with respect to purchase or sale of same. Respondent contended that they were not a party to any alleged agreement by and between Claimant and representatives of Allied Capital, Inc. with respect to any commissions due and owing with respect to the purchase of 400 shares of Hasbro, Inc. Respondent further contended that Claimant, in making the purchase of Hasbro, Inc. is responsible to pay Respondent's commission with respect to said sale and if Claimant has any claim with respect to payment of said commissions by any other party, his claim is with his broker, Allied Capital, Inc. with whom he made the alleged agreement, to recoup the commissions due and owing and not with Respondent, who earned the commissions by providing a service. Respondent asserted that with respect to Claimant's allegations as to why his 400 shares of Hasbro was not sold as one transaction, the sale of 7 shares and the remaining shares were not both related to Claimant's request whereby the Claimant's broker's representative's direction, 7 shares of Hasbro were sold on May 28, 1993 to satisfy the commissions earned of \$242.00 with respect to the initial purchase and the remaining 393 shares in the account were subsequently sold pursuant to Claimant's direction, therefore, Respondent is not liable for Claimant's claim for damages.

#### **RELIEF REQUESTED**

Claimant Bernard J. Strassberg requested \$585.87 in actual damages.

Respondent Broadcast Capital Corporation requested the claim be denied.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc L. Ripp, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 7, 1993 and by the Respondent on August 26, 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. The claim of Claimant Bernard J. Strassberg against Respondent Broadcort Capital Corp. is dismissed.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Bernard J. Strassberg shall be retained by the NASD, Inc.

**AFFIRMATION**

I, MARC L. RIPP, 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.

  
Signature of Arbitrator

DATE OF DECISION: December 1, 1993

STATE OF: NEW JERSEY

SS:

COUNTY OF: ESSEX

On this 16<sup>th</sup> day of November 1993, before me personally appeared Marc L. Ripp, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Helen G. Migut

HELEN G. MIGUT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 4, 1998.