

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roger A. Madden

93-03347

Name of Respondents

Hibbard Brown & Company, Inc.

Dennis Lomax

Timothy A. Walter

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 24, 1993, Claimant Roger A. Madden, who appeared Pro Se, alleged that he told Respondent Timothy Walter ("Walter"), an account executive at Respondent Hibbard Brown & Co., Inc. ("Hibbard Brown"), that his investment objectives were to minimize risk through diversification, receive sound financial advice from his broker and to receive current market information on the status of his investments. Claimant further alleged that Respondent Walter assured him that he could provide these services for Claimant. Claimant contended that the investments recommended by Respondent Hibbard Brown and Respondent Walter were unsuitable in light of his investment objectives. Claimant further contended that the monthly and quarterly statements issued by Respondent Hibbard Brown were misleading, and alleged that had they not been misleading, he would have had the opportunity to liquidate his investments with Respondent Hibbard Brown before they lost the majority of their value. Claimant alleged that from March through August, 1992, he received no communication from Respondent Hibbard Brown or Respondent Walter regarding the value of the stocks purchased through Respondents. Claimant further alleged that Respondent Walter failed to provide the service agreed upon at the time they initiated their business relationship. Claimant contended that after Respondent Walter left Respondent Hibbard Brown, Respondent Hibbard Brown was negligent in not assigning his account to a new broker in a timely fashion, which risked his account to a loss in value. Claimant

further contended that Respondent Dennis Lomax of Respondent Hibbard Brown did not offer an explanation to Claimant as to why he was not advised of the value of his stocks. Claimant alleged that Respondent Hibbard Brown encouraged its brokers to use high pressure sales tactics. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondents Hibbard Brown & Company, Inc. and Dennis Lomax, through Respondent Hibbard Brown's in-house counsel Steven B. Caruso, Esq., maintained that the Claimant was seeking to compel the Respondents to compensate him for the losses he sustained as a result of the market performance of his investment portfolio having failed to meet his expectations. Respondents further maintained that the Claimant expressed an understanding of the investment arena and an interest in opportunities with a greater degree of risk which would potentially provide greater returns. Respondents contended that Claimant represented his net worth at between \$125,000 and \$249,999 and his annual income at between \$75,000 and \$124,999, and thus the Respondents determined that equity investments and long-term growth situations were suitable for Claimant. Respondents contended that Claimant was provided with continuous updates on his portfolio including information as to price movements. As a result of the above, Respondents maintained that they should not be held liable in this matter.

Respondent Timothy Walter, who appeared Pro Se, maintained that Claimant wanted to diversify in small companies which Respondent Hibbard Brown thought were companies that had an opportunity for growth and appreciation. Respondent further maintained that when Claimant opened his account he was asked about his annual income and net worth. Respondent contended that Claimant stated he was interested in speculation and growth. Respondent further contended that Claimant was updated at least every month on all three of his investments with Respondent Hibbard Brown. Respondent maintained that he never placed high pressure upon the Claimant in order to induce him to buy securities. As a result of the above, Respondent contended that he should not be held liable in this matter.

RELIEF REQUESTED

Claimant Roger A. Madden requested \$5,337.00 in actual damages.

Respondents Hibbard Brown & Company, Inc., Dennis Lomax and Timothy A. Walter requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, David Moore, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 20, 1993, by Respondent Hibbard Brown & Company, Inc. on February 28, 1994, by Respondent Dennis Lomax on March 1, 1994, and by Respondent Timothy A. Walter on September 17, 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 claims of Claimant Roger A. Madden against Respondents Hibbard Brown & Co., Inc., Dennis Lomax and Timothy A. Walter are dismissed in their entirety.
2. ~~The parties shall bear~~ their respective costs.
3. ~~The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.~~

AFFIRMATION

I, DAVID MOORE, do hereby affirm upon my oath of 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: August 2, 1994