

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert & Debra Dourty

93-04487

Name of Respondents

Hibbard Brown & Co., Inc.
Russell Myrick

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 28, 1993, Claimants Robert and Debra Dourty, through their counsel Gregory D. Kincaid, Esq., Olathe, Kansas, alleged that Respondents Hibbard Brown & Co., Inc. ("Hibbard Brown") and Russell Myrick ("Myrick") used high pressure sales tactics in order to induce Claimants to purchase securities from them. Claimants further alleged that they purchased 150 shares of Future Medical Technologies International, Inc. ("Future Medical") stock from Respondents, and that Respondents never sent Claimants any information or prospectus detailing this stock. Claimants contended that Respondent Myrick pressured them into purchasing stock in First National Realty, Inc., Site Based Media, Inc. and CCC Franchising, Inc. Claimants further contended that they purchased through Respondents Digital Products Corp. stock, and that this stock was sold without their authorization. Claimants alleged that Respondents repeatedly violated Regulation T provisions by pushing Claimants into purchases and then delaying payment by canceling the transaction and subsequently reordering the stock, while threatening collection action if some transactions were not paid for. Claimants alleged that Respondents induced them into taking an advance on their credit card at 21% interest in order to pay for the unauthorized stock purchases. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondents Hibbard Brown & Co., Inc. and Russell Myrick, through Hibbard Brown's in-house counsel Steven B. Caruso, Esq., New York, New York, maintained that Claimants seek to compel them, well after the fact, to compensate them for the losses they sustained as a result of the market performance of their investment portfolio having failed to meet their expectations. Respondents further maintained that Claimants provided them with a multitude of personal and financial data which included, but was not limited to, their ages, occupations, social security numbers, banking references, approximate annual income, net worth, prior investment experiences and existing investment objectives. Respondents contended that based on this information given them by Claimants, as well as the Claimants' stated understanding of the investment arena and desire to pursue opportunities with a greater degree of risk in pursuit of potentially greater returns, the Claimants were determined to be suitable for equity investments in general, and long-term growth situations in particular. Respondents further contended that on each occasion where a purchase recommendation was made to Claimants, they were given a fair and balanced presentation of both the investment merits and risks that were associated with each of the same. Respondents maintained that each time the Claimants chose to pursue a purchase recommendation, they were provided with both a written confirmation as well as subsequent account statements which fully set forth the specific details of the particular transaction, none of which were protested or otherwise objected to. Respondent Myrick further maintained that he never recommended nor did he have knowledge that Claimants utilized a credit card in order to finance their investment portfolio purchases. Respondent Myrick contended that each and every purchase or sale order that was effectuated in the Claimants' accounts was placed with the prior knowledge, consent and permission of the Claimants. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Robert and Debra Dourty requested \$9,967.00 in actual damages, \$2,635.00 in interest, and \$3,200.00 in attorney's fees.

Respondents Hibbard Brown & Co., Inc. and Russell Myrick 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 Lewin, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 19, 1993,

by Respondent Hibbard Brown & Co., Inc. on February 18, 1994, and by Respondent Russell Myrick on February 25, 1994.

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 Russell Myrick are jointly and severally liable and shall pay to Claimants Robert and Debra Dourty \$5,100.00 in actual damages.
2. Respondents Hibbard Brown & Co., Inc. and Russell Myrick are jointly and severally liable and shall pay to Claimants Robert and Debra Dourty simple interest at the rate of 21.9% per annum from November 13, 1991 to April 6, 1993 on principal of \$3,000.00.
3. Respondents Hibbard Brown & Co., Inc. and Russell Myrick are jointly and severally liable and shall pay to Claimants Robert and Debra Dourty \$3,200.00 in attorney's fees.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Hibbard Brown & Co., Inc. and Russell Myrick are jointly and severally liable and shall pay to Claimants Robert and Debra Dourty \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, DAVID LEWIN, 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 23, 1994