

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roger G. and Barbara J. Gemeinhardt JTWROS

93-05204

Name of Respondents

Hibbard Brown & Co., Inc.
Robert C. McAlexander

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 16, 1993, Claimants Roger G. and Barbara J. Gemeinhardt, who appeared Pro Se, alleged they told Respondent Robert McAlexander ("McAlexander"), a broker at Respondent Hibbard Brown & Co., Inc. ("Hibbard Brown"), that they were not in a position to risk losing a significant amount of any investment. Claimants further alleged that they purchased 1000 shares of VCS, Inc. common stock, 1000 shares of Truvel Corp. common stock, 3000 shares of Creative Resources common stock, 200 shares of Graystone Co. common stock, and shares of American Video Imaging stock from Respondents. Claimants contended that Respondents misrepresented the degree of risk involved in these securities. Claimants further contended that Respondents misrepresented the potential for NASDAQ certification of these securities. Claimants alleged that Respondents misrepresented the potential for short term gains in these stocks. Claimants further alleged that Respondents failed to disclose the financial condition of these companies. Claimants contended that Respondents used the technique of a "quick-turnaround" sale for profit on an early investment as "bait" for future offerings. As a result of the above, Claimants alleged that they have suffered damages for which the Respondents should be held liable.

Respondents Hibbard Brown & Co., Inc. and Robert McAlexander, through Respondent Hibbard Brown's in-house counsel Steven B. Caruso, Esq., New

York, New York, maintained that the Claimants are improperly seeking to compel the Respondents, 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 to Respondents 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 experience and their existing investment objectives. Respondents contended that based on 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 Claimants were given a fair and balanced presentation of both the investment merits and risks that were associated with each investment recommendation made by Respondents. Respondents maintained that Claimants 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. Respondents further maintained that the Claimants waited more than four and one-half years, well after the applicable statute of limitations lapsed, to first voice any concern with respect to their investment portfolio. Respondents contended that they were never found by the State of Kansas to have engaged in any violative conduct whatsoever. Respondent McAlexander further contended that he never represented to Claimants that the securities he recommended were soon to be listed on NASDAQ which would drive up the worth of the stocks quickly. Respondent McAlexander maintained that two of the four securities Claimants purchased were already listed with NASDAQ at the time that they owned them. As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Roger G. and Barbara J. Gemeinhardt requested \$4,349.50 in actual damages, \$978.15 in interest, and \$500.00 in punitive damages.

Respondents Hibbard Brown & Co., Inc. and Robert McAlexander requested that the Claimants 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, Daniel L. Fowler, Esq., was selected to review and determine the matter in controversy between the

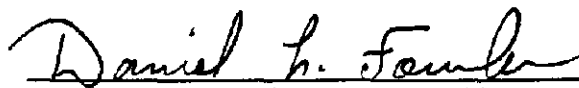
parties set forth in submissions to Arbitration signed by the Claimants on December 13, 1993, by Respondent Hibbard Brown & Co., Inc. on March 1, 1994, and by Respondent Robert McAlexander on March 1, 1994.

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 Robert McAlexander are jointly and severally liable and shall pay to Claimants Roger G. & Barbara J. Gemeinhardt \$4,349.50 in actual damages.
2. Respondents Hibbard Brown & Co., Inc. and Robert McAlexander are jointly and severally liable and shall pay to Claimants Roger G. and Barbara J. Gemeinhardt simple interest at the rate of 7% per annum from July 31, 1990 to the date of payment of the award.
3. Claimants Roger G. & Barbara J. Gemeinhardt's claim for punitive damages is dismissed.
4. The \$125.00 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 Robert McAlexander are jointly and severally liable and shall pay to the Claimants \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, DANIEL L. FOWLER, ESQ., 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