

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard P. Zizan

NASD Case No.
94-00280

Name of Respondent(s)

Hibbard Brown & Co., Inc.
Chris Vukich

REPRESENTATION

For Claimant Richard P. Zizan ("Zizan") appeared Bruce E. Baldinger, Esq., of Baldinger & Levine located in Somerville, New Jersey.

Respondent Chris Vukich ("Vukich") appeared pro se.

There is a bankruptcy order staying the proceeding against Respondent Hibbard Brown & Co., Inc. ("Brown"). Therefore, no appearance was made on behalf of this respondent.

CASE INFORMATION

Statement of Claim filed on: January 21, 1994.

Claimant's Submission Agreement signed on: January 11, 1994.

Statement of Answer filed by Respondent Vukich on: May 12, 1994.

Respondent Vukich's Submission Agreement signed on: May 9, 1994.

Statement of Answer filed by Brown on: May 12, 1994

Respondent Brown's Submission Agreement signed on: May 6, 1994.

HEARING INFORMATION

Hearing Date/Sessions: September 6, 1996 - 2 Sessions

The hearing took place at the offices of the National Association of Securities Dealers, Inc., located in New York City.

CASE SUMMARY

Claimant alleged that in or about February 1990 Respondent Vukich "cold called" the claimant. Zizan stated that subsequently in March 1990 he opened an account with Brown. The claimant maintained that he had little experience as an investor and, as a result, believed and trusted the Respondents' representations and recommendations. In addition, the claimant contended that he did not have the knowledge or financial sophistication to recognize recommendations which met his investment objectives.

Zizan contended that based upon the Respondents' representations, he believed that he would be investing in good quality growth stocks. Instead, as alleged by the claimant, he purchased, on the recommendation of the Respondents, low quality, high risk, "story" stocks. The claimant contended that Respondent Brown was a market maker for these stocks. Moreover, Zizan maintained that these issues were mostly controlled by Respondent Brown and that Brown did not want stock sold which would compete with its own marketing. Therefore, as contended by the claimant, Brown ordered Vukich not to allow Vukich's clients to sell their stock.

Based upon the foregoing, the claimant averred that the Respondents made grave and material misrepresentations as to the safety and suitability of the investments in question; that the Respondents breached their contract; that Respondent Brown failed to supervise and properly train Vukich; that the Respondents breached their fiduciary duty owed to the claimant; and that the Respondents were negligent.

Respondents denied the assertions contained in the Statement of Claim and alleged that the Statement of Claim was without any foundation, devoid of evidentiary fact and deficient as a matter of law. Specifically, the Respondents maintained that prior to the establishment of claimant's account, claimant provided Vukich with personal and financial data. In addition, the Respondents contended that the claimant discussed with Vukich the claimant's prior investment experiences and his existing investment objectives. According to the Respondents, based upon the data provided by claimant and discussions with the claimant, it was determined that equity investments and long-term growth situations were suitable investments for claimant. The Respondents further alleged that Zizan chose which investment recommendations to pursue and which to decline. In addition, Brown and Vukich contended that each and every purchase or sale order was confirmed to the claimant in writing and that the claimant did not protest or object to any of them.

Respondents also raised the following affirmative defenses: 1) failure to state a cause of action; 2) estoppel; 3) waiver; 4) laches; 5) ratification; 6) failure to mitigate damages; 7) assumption of risk; 8) contributory negligence; 9) statute of limitations; 10) statute and judicial opinion; 11) doctrine of unclean hands; 12: claimant's violation of the code of Arbitration Procedure; and 13) Respondent Brown established and maintained a system to supervise the activities of registered representatives which was reasonably designed to achieve compliance with the applicable securities laws and regulations and with the rules of the NASD.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of at least \$33,541.00 plus punitive damages. In addition, the claimant sought legal fees, expert fees, hearing expenses and such relief as the panel of arbitrators deemed just and proper.

Respondents Brown and Vukich requested that the Statement of Claim be dismissed/barred in its entirety and that Respondents be awarded such other and further relief as may be deemed just, proper and equitable under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Brown is in bankruptcy.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. By the unanimous decision of the panel of arbitrators the claimant's claims are dismissed in their entirety.
2. Forum fees are to be split equally between the two parties.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable Filing Fee:	\$120.00
Hearing Session Deposit (2 sessions @ \$400 each):	<u>\$800.00</u>
Total Fees:	\$920.00

1. Claimant has previously deposited \$520.00 and owes nothing.
2. Respondent Vukich owes \$400.00 to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

Concerning Arbitrators' Signatures
Name

Lawrence A. Pittore, Esq.

Patricia Ann Cappelli

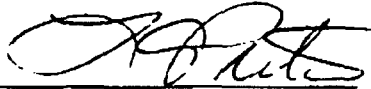
Madelon Rosenfeld, Esq.
Madelon M. Rosenfeld, Esq.

NASD Date of Decision: October 7, 1996

I, Madelon M. Rosenfeld Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Madelon Rosenfeld, Esq.

Concurring Arbitrators' Signatures
Name




Lawrence A. Pittore, Esq.

Patricia Ann Cappelli

Madelon M. Rosenfeld, Esq.

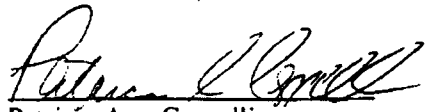
NASD Date of Decision: October 7, 1996

I, Lawrence A. Pittore, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.



Concurring Arbitrators' Signatures
Name

Lawrence A. Pittore, Esq.



Patricia Ann Cappelli

Madelon M. Rosenfeld, Esq.

NASD Date of Decision: October 7, 1996

I, Patricia Ann Cappelli, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

