

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Roger K. O'Reilly, Trustee Roger K. O'Reilly Trust

and

94-00574

Name of Respondent

Gregory Gurriero

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### **REPRESENTATION OF PARTIES**

Roger K. O'Reilly, Trustee Roger K. O'Reilly Trust ("Claimant") was represented by Roger K. O'Reilly, Esq., O'Reilly, Cunningham, Norton & Mancini, Wheaton, Illinois.

Gregory Gurriero ("Respondent") was originally represented by Steven B. Caruso, Esq., Hibbard Brown & Co., Inc., New York, New York and later appeared *pro se*.

### **CASE INFORMATION**

The Statement of Claim was filed on or about February 16, 1994. Submission Agreement of Claimant Roger K. O'Reilly, Trustee Roger K. O'Reilly Trust was signed on March 3, 1994.

Statement of Answer was filed by Respondent Gregory Gurriero on or about May 12, 1994. Submission Agreement of Respondent Gregory Gurriero was signed on May 10, 1994.

### **HEARING INFORMATION**

The hearing was held on November 18, 1994 in Chicago, Illinois for a total of one (1) session.

### **CASE SUMMARY**

The Claimant alleged that Respondent, while employed by or acting as an agent for Hibbard Brown & Co, Inc., engaged in misleading and fraudulent acts regarding the activity in the Claimant's account. The Claimant specifically alleged that:

- ♦ On July 21, 1993, Respondent induced the Claimant to purchase 2700 shares of Process Equipment, Inc. at \$5.00 per share. Respondent failed to inform the Claimant that Hibbard Brown & Co., Inc. owned approximately 28% of Process Equipment, Inc. Moreover, prior to July 21, 1993, Respondent was aware of Process Equipment, Inc.'s losses, and failed to reveal the financial instability of the company to the Claimant;
- ♦ On June 15, 1993, Respondent induced the Claimant to purchase 700 shares of Sanyo Industries stock at \$6.50 per share. In mid-August the Claimant instructed the Respondent to sell the Sanyo Industries stock at \$5.50 per share. However, the stock was not sold until October 25, 1993, at \$4.75 per share; and
- ♦ As a result of the misrepresentations, omissions and fraud, the Claimant suffered a loss of \$13,504.00 for the Process Equipment, Inc. stock, and \$525.00 for the Sanyo Industries stock.

The Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that a fair representation and sufficient information of Process Equipment, Inc. were given to Claimant. Furthermore, the Claimant elected to retain the Sanyo Industries stock until October of 1993. In addition, Respondent asserted several affirmative defenses, including the following;

- ♦ The Statement of Claim fails to state a cause of action;
- ♦ The claims are barred by the doctrines of estoppel, waiver, ratification, and laches;
- ♦ The claims are barred by the statute of limitations;
- ♦ Claimant failed to mitigate damages;
- ♦ Claimant assumed the risks involved; and
- ♦ Claimant's losses were caused, in whole or in part, by Claimant's own negligence.

#### **RELIEF REQUESTED**

Claimant requested an award in the total amount of \$14,029 for compensatory damages, plus interest and filing fees, and an amount of \$12,500 in punitive damages.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Hibbard Brown & Co., Inc. was originally named as a Respondent in this matter. This matter did not proceed against Hibbard Brown & Co., Inc. as a result of its' bankruptcy filing. Subsequent to the completion of the hearing of this matter and prior to the completion of the drafting of the panel's decision in this matter, the Bankruptcy Court issued a restraining order preventing the prosecution of matters involving either Hibbard Brown & Co., Inc. and registered representatives employed by Hibbard Brown & Co., Inc. On June 16, 1995 the restraining order was entered excluding Respondent Gurriero among others.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

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

- 1 Respondent Gregory Gurriero shall be and hereby is liable for and shall pay to the Claimant Roger K. O'Reilly the sum of **Two thousand five hundred dollars (\$2,500)** as compensatory damages on Count I of the Statement of Claim. The claims asserted in Count II of the Statement of Claim shall be and hereby are dismissed in their entirety.
2. The request for punitive damages shall be and hereby is denied in its' entirety.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$400 = \$400 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees \$200 of the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant Roger K. O'Reilly, Trustee Roger K. O'Reilly Trust. The balance of \$100 shall be refunded to the Claimant. Respondent Gregory Gurriero shall be and

hereby is liable for and shall pay to the NASD the sum of \$200 as the balance due for forum fees.  
**Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Fay Clayton, Esq.

Fay Clayton, Esq.

Public Arbitrator, Presiding Chair

August 7, 1995

/s/ Mark Miller, Esq.

Mark Miller, Esq.

Public Arbitrator

August 11, 1995

/s/ Thomas M. Lehner

Thomas M. Lehner

Industry Arbitrator

August 8, 1995