

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Naomi Levine and Mark Levine

94-01779

Name of Respondents

Hibbard Brown and Company, Inc.
Richard Dorsi
Jeffrey Schult
Susan Torpie

CASE SUMMARY

In a claim filed with the National Association of Securities Dealer, Inc. on May 12, 1994, Claimants Naomi and Mark Levine ("Claimants"), who appeared Pro Se, alleged that Respondents Hibbard Brown and Company, Inc. ("Hibbard"), Richard Dorsi ("Dorsi"), Jeffrey Schult ("Schult"), and Susan Torpie ("Torpie") (collectively referred to as "Respondents") manipulated stock prices, made misrepresentations, omitted information and provided unsuitable investments. Claimants further alleged that Schult provided them with false information about investment companies, stating that they were conservative investments which could easily be followed in the newspaper. Claimants also that Schult neglected to inform them that the investment companies they purchased were not paying dividends because they had no real earnings. Claimants asserted that their relationship with Schult ended when he gave them incorrect quotes about their investments and pressured them to purchase Treats International.

Claimants further asserted that Hibbard Brown & Company manipulated the market by overvaluing the price of stocks and thus placed their investments at risk. Claimants also asserted that Hibbard Brown failed to put them on notice regarding their losses. Claimants contended that if their account statement had shown a fund value, they would have been able to prevent additional losses to their account.

Claimants further contended that Richard Dorsi, their reassigned broker at Hibbard Brown, reneged on his promise to send monthly account statements. Claimants also contended that their risk profile consisted of saving for retirement and purchasing non-dividend paying stocks, therefore, Dorsi's investment recommendations were unsuitable. Claimants alleged that Richard

Dorsi and Schult were both aware that the money invested in stocks was to be used for retirement purposes. Claimants further alleged that despite Schult's and Dorsi's knowledge of their investment goals, they continuously provided them with positive information about the stocks and neglected to inform them that they were "junk." Claimants also alleged that due to the wrongdoing of the Respondents, they suffered damages for which the Respondents should be held liable.

Respondent Jeffrey Schult ("Schult" or "Respondent") through his representative and in-house counsel at Hibbard Brown & Co., Inc., Steven B. Caruso, filed a joint Statement of Answer with Hibbard Brown & Co., Inc. ("Hibbard Brown") and Richard Dorsi ("Dorsi") maintained that he made no misrepresentations or omissions with regard to Claimants purchases because such conduct is inconsistent with Hibbard Brown's policies. Respondent further maintained that every transaction made on behalf of the Claimants was executed with their prior knowledge, consent and permission after having received a fair presentation of the material necessary for investment considerations. Respondent contended that he made suitable investment recommendations to the Claimants that were based on the facts investor profile information disclosed by the Claimants at the inception of their relationship with the Respondent. Respondent further contended that there is no evidence of his misconduct or that he acted improperly. Respondent maintained that he committed no wrongdoing and requested that the claims against him be dismissed.

Respondent Jeffrey Schult ("Respondent"), who appeared Pro Se, maintained that all the investment recommendations which he made to the Claimants were based on Hibbard Brown's research. Respondent further maintained that he made suitable investment recommendations to the Claimants, based on information they provided on their new account form. Respondent also maintained that their new account form showed that the Claimants were interested in investing a percentage of their savings in low priced growth stocks. Respondent contended that he disclosed to Claimants all information he had. Respondent further contended that the Claimants did not inform him that they wanted to use their money for retirement. Respondent Schult also contended that Claimant Levine knew the difference between a safe investment for retirement and a stock as evidenced by his verbal rejection of a mutual fund during their initial conversation. Respondent Schult maintained that he committed no wrongdoing and requested that the claims against him be dismissed.

Respondents Hibbard Brown and Company, Inc. and Richard Dorsi filed a bankruptcy petition, thus, all matters concerning these parties are indefinitely stayed.

Respondent Susan Torpie failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Naomi and Mark Levine requested \$6,320.50 in actual damages and the cost of this proceeding.

Respondent Jeffrey Schult requested that the claims of the Claimant be dismissed.

Respondent Susan Torpie did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Susan Torpie was sent a copy of the statement of claim and the arbitrator's identity by certified mail and given an opportunity to respond, which she failed to do. In addition, service of the notice of overdue answer was effected as evidenced by the signed return receipt card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Susan Torpie had notice of the claim and was required to submit to this arbitration proceeding; and, is therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gail I. Auster, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Naomi and Mark Levine on June 15, 1994, and by the Respondent Jeffrey Schult on July 28, 1994, and not by the Respondent Susan Torpie.


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 Jeffrey Schult and Susan Torpie are jointly and severally liable and shall pay to the Claimants Naomi and Mark Levine \$6,320.00 in actual damages.
2. Respondents Jeffrey Schult and Susan Torpie are jointly and severally liable and shall pay to the Claimants Naomi and Mark Levine simple interest at the rate of 9% per annum from the date of complaint to the date of payment of the Award.
3. The parties shall bear their respective costs.

4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealer, Inc. by the Claimants Naomi and Mark Levine shall be retained by the NASD, Inc. The Respondents Jeffrey Schult and Susan Torpie are jointly and severally liable and shall pay to the Claimants Naomi and Mark Levine \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **GAIL I. AUSTER**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


GAIL I. AUSTER

Date of Decision: September 23, 1996