

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

M. Danny and Ellyn Levin

94-02248

Name of Respondent

Stephen M. Hischer

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 15, 1994, Claimants M. Danny and Ellyn Levin, who appeared Pro Se, alleged that Respondent Stephen M. Hischer, made misrepresentations and did not properly handle their account. Claimants further alleged that they purchased the stock of Huntway Products through Respondent, and this stock started to drop in price on the day Iraq invaded Kuwait. Claimants contended that Respondent was not available for several hours to advise them on a course of action, during which time the stock declined by an additional 2 1/2 points, leading to a \$6,250.00 loss. Claimants further contended that in August of 1991, pursuant to Respondent's recommendation, they purchased the stock of Bally Mfg. which led to an additional \$6,490.81 loss. Claimants alleged that they have suffered damages for which the Respondent should be held liable.

Respondent Stephen M. Hischer, through his representative, Mary Ellen Vitrano, Esq., of Sutro & Co., Inc., San Francisco, CA, maintained that Claimants' always made their own decision, frequently conducting their own research of companies, and obtaining annual reports. Respondent further maintained that Claimants have a history of buying speculative investments. Respondent contended that Iraq invaded Kuwait on August 2, 1990 and Claimants sold their shares of Huntway on September 24, 1990, so it is unclear which date Claimants are referring to. Respondent further contended that the price of Huntway did not decline by 2 1/2 points on September 24, 1990 and Claimants could have sold, via another broker, if they wanted to. Respondent maintained that he recommended Bally stock to Claimants, because he believed this was a suitable investment based upon his knowledge of their prior investment experience and the security. Respondent further maintained that he has conducted himself properly in all respects and should not be held liable for Claimants' loss.

RELIEF REQUESTED

Claimants M. Danny and Ellyn Levin, requested \$9,615.81 in actual damages.

Respondent Stephen M. Hischer, requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Margaret Kallman, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 8, 1994 and by the Respondent on September 20, 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. The claims of the Claimants M. Danny and Ellyn Levin, against the Respondent Stephen M. Hischer, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants M. Danny and Ellyn Levin, shall be retained by the NASD, Inc. Respondent Stephen M. Hischer, shall pay to the Claimants \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, MARGARET KALLMAN, 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.


Margaret Kallman

DATE OF DECISION: September 25, 1995

REPORT OF ARBITRATOR

1. The Huntway sale:

As the sale had to be made as soon as possible because of Iraq's invasion of Kuwait, and the claimant was anxious to sell, he could have mitigated his loss by selling through any broker at respondent's office. All brokers' availability at all times cannot be guaranteed. In any case, the confirmation slip for the sale of Huntway Partners which Claimant attached to his Statement of complaint shows that he sold his Huntway Partners Units many weeks later, on September 24, 1990.

2. The Bally Buy:

Whether a stock recommendation is suitable for a customer depends on a number of factors, such as

- a. the customer's general investment goals, and the particular goal that would be met in buying this particular stock,
- b. the customer's risk tolerance,
- c. the risk of the stock at the time of the recommendation,
- d. what the stockbroker said the risk was; whether the broker was truthful and/or accurate,
- e. the size of the proposed investment in relation to the customer's portfolio (the allocation of assets in the portfolio) and in relation to his total assets (the higher the net worth, the higher the amount of risk that can be borne; conversely, the lower the net worth, the lower the level of risk that is tolerable),
- f. the customer's knowledge of the stock market and his capacity to appreciate risk, i.e. his investment sophistication (i.e. regardless of what a stockbroker said, what would a particular customer know about the level of risk?)

Based on the information received from both parties, there is no apparent unsuitable recommendation.


Margaret Kallman