

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution  
In the Matter of the Arbitration Between

Name of Claimant

Kurian Chummar;

and

95-02190

Name of Respondent

D.H. Blair & Company;  
Frederick S. Levine;  
Patrick B. Gibson.

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### **REPRESENTATION OF PARTIES**

For Claimant: Claimant Kurian Chummar ("Chummar") was represented by Thomas C. O'Brien, Esq. of O'Brien & Barbahen in Chicago, Illinois.

For Respondents: Respondent D. H. Blair & Co. ("Blair & Co.") and Respondent Frederick S. Levine ("Levine") were represented by Todd B. Marcus, Esq. of Bachner, Tally, Polevoy & Misher, LLP in New York, New York. Respondent Patrick B. Gibson ("Gibson") was represented by Steven N. Fuller, Esq. of Peabody & Brown in Boston, Massachusetts.

### **CASE INFORMATION**

Statement of Claim filed on: May 5, 1995.

Claimant's Submission Agreement signed on: April 28, 1995 by Kurian Chummar.

Statement of Answer filed by Blair & Co. and Levine on: July 5, 1995.

Respondent Blair & Co.'s Submission Agreement signed on:

Respondent Levine's Submission Agreement signed on: June 14, 1995 by Frederick S. Levine.

Statement of Answer filed by Patrick Gibson on: June 15, 1995.

Respondent Gibson's Submission Agreement signed on: June 14, 1995.

Respondent's Motion to Enforce Settlement filed on: September 17, 1996.

Claimant's Opposition to Respondent's Motion to Enforce Settlement filed on: September 19, 1996.

Respondent's Reply to Claimant's Opposition to Respondent's Motion to Enforce Settlement filed on: September 24, 1996.

### **HEARING INFORMATION**

Pre-Hearing Conference: September 26, 1996 for One (1) Session.

Hearing Location: Chicago, Illinois

### **CASE SUMMARY**

Claimant alleged that Respondents failed to execute requested trades, traded without authorization, and materially misrepresented investment risks. Claimant specifically alleged that:

1. Chummar opened two Blair & Co. accounts in July and October, 1994. Levine and Gibson were Blair & Co. sales associates assigned to the account;
2. In August 1994, Levine recommended that Chummar purchase Health Image Media, Inc. ("Health Image") securities. Levine failed to disclose that Health Image was pink listed, indicating a high-risk security. In October 1994, Chummar requested that Levine sell the poorly performing Health Image. However, Respondents did not sell Health Image until December 23, 1994 incurring substantial losses;
3. In October 1994, Gibson recommended that Chummar purchase U. S. Diagnostic Laboratories, Inc. ("US Diagnostic") through an initial public offering ("IPO"). Chummar agreed to purchase 2,000 US Diagnostic IPO units;
4. Gibson told Chummar that he had allocated 150,000 aftermarket units to Chummar's account. Chummar did not want to execute this large and expensive purchase. After several telephone conversations, Chummar discovered that 18,000 IPO units of US Diagnostic and 1,000 units of Telepad had been purchased for his account. Chummar never agreed to these purchases; and
5. After several lengthy telephone conversations, the US Diagnostic securities were sold to settle the disputed account.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

1. Chummar is an experienced, wealthy investor, who explicitly authorized the purchase of 2,000 US Diagnostic IPO and 18,000 after-market shares;

2. Before purchasing the securities, Chummar intended to renege the trade if the security did not increase in value. Chummar subsequently reneged because the security's value declined;
3. In good faith, Blair & Co. agreed to settle the account by cancelling and re-billing the purchase thereby removing Respondent's commission; and
4. Chummar's Statement of Claim is barred by the affirmative defenses of failure to state a claim, failure to mitigate damages, statute of limitations, laches, estoppel, assumption of the risk, contributory negligence, failure to mitigate damages, doctrine of unclean hands, statute of frauds, ratification, waiver, failure to meet NASD pleading requirements, and lack of jurisdiction.

#### **RELIEF REQUESTED**

Claimant requested an award of damages in excess of \$40,000 plus interest and attorneys' fees.

Respondents requested that the Panel enter an award denying the claim in its entirety, dismissing the Claim with prejudice and awarding Respondents such other relief as the Panel deems just and proper, including attorneys' fees and costs.

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

This case was originally closed on pursuant to a settlement agreement on January 10, 1996. This case was re-opened against Respondent Gibson on June 25, 1996 because the Claimant ultimately rejected the settlement made by Gibson who failed to pay in a timely manner.

On September 26, 1996, the Panel heard arguments from the parties on Respondent Gibson's Motion to Enforce Settlement. After deliberation, the Panel has determined that the Motion shall be granted and the award made below.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

#### **AWARD**

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

1. Respondent Patrick Gibson is liable for and shall pay to Claimant Kurian Churnmar the sum of \$3,000.00, plus interest at the rate of 9% per annum accruing from January 22, 1996 until the sum was paid in full;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
3. Any relief not specifically awarded is hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$ 400.00 per hearing session. There was One (1) session x \$400.00 = \$400.00 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$ 100.00 and shall refund the balance of \$420.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Respondent Patrick Gibson is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$400.00 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200.00 paid by Respondent D.H. Blair & Company.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Lee H. Goodman  
Lee H. Goodman  
Public Arbitrator, Presiding Chair

June 10, 1997

/s/ John K. Notz, Jr., Esq.  
John K. Notz, Jr., Esq.  
Public Arbitrator

June 3, 1997

/s/ Robert L. Sanders  
Robert L. Sanders

June 7, 1997

Industry Arbitrator