

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Brent Dowdle

96-01715

Name of Respondent

The Harriman Group, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 19, 1996, Claimant Brent Dowdle ("Claimant"), who appeared Pro Se, alleged that Respondent The Harriman Group, Inc. ("Respondent"), through its stockbroker, George Casazza ("Casazza"), fraudulently recommended that he buy certain securities which he followed to his detriment. Claimant further alleged that in July of 1994, Casazza commenced making a series of phone calls which led to purchases of common stock shares of California Quartz, Dr. Pepper. Claimant also alleged that Casazza convinced him to purchase these stocks by use of a detailed technical analysis and by stating he would receive a 100% return on his investments in the short term. Claimant contended that both these stocks lost value within three months after the purchase.

Claimant asserted that Casazza left his employment with Respondent and that Ann Gibbins ("Gibbins") and Michael Shelft ("Shelft") initiated contact soliciting business for an initial public offering ("IPO"). Claimant further asserted that the IPO was for a company called Tivoli Industries and that although he had agreed to purchase 500 shares, the trade was not executed. Claimant also asserted that he learned of the failed execution at the time he attempted to sell the shares at a profit. Claimant contended that Shelft told him the transaction had not been made because the IPO was "over-subscribed." Claimant further contended that as a result of the above, he has suffered losses for which the Respondent should be held liable.

Respondent The Harriman Group through its representative and in-house counsel, Robert F. Strecker, denied each and every allegation of wrongdoing set forth by the Claimant. Respondent maintained that Claimant opened his account with it on July 8, 1994 and closed it on September 6, 1994. Respondent further maintained that Claimant purchased 200 shares of Dr. Pepper and

5000 shares of California Quartz during this period. Respondent also maintained that upon opening his account, Claimant's financial profile indicated that he owned his own business, had over \$100,000.00 of net worth and was interested in speculation and growth with risk. Respondent contended that Claimant presented himself as a knowledgeable investor with the requisite experience to trade the stocks in dispute. Respondent further contended that Casazza never guaranteed a profit to Claimant.

Respondent asserted that neither Gibbins, a sales assistant, nor Scheft, an independent research analyst, would have contacted him concerning stock purchases because such contact would violate both its policy and the NASD's by-laws. In addition, Respondent asserted that it is against its policy and the NASD's by-laws to presell an IPO. Respondent further asserted that it doubts that Claimant would have been aggressively pursued by any broker for the purchase of shares of an IPO because they are widely sought by investors. Respondent also asserted that as a result of the above, it should not be held liable.

### **RELIEF REQUESTED**

Claimant Brent Dowdle requested \$4,206.25 in actual damages, \$5,793.75 in punitive damages and \$5,000.00 in expenses.

Respondent The Harriman Group requested that the claims be dismissed in their entirety. Respondent further requested reimbursement of disbursements associated with this matter as well as attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's motion to strike from the record Claimant's June 18, 1996 document entitled "Response to Counterclaim" as it is superfluous, redundant and prejudicial. The arbitrator denied the motion as moot because the claims were dismissed in their entirety.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sidney R. Barrett, Jr., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 18, 1996 and by the Respondent on May 29, 1996.

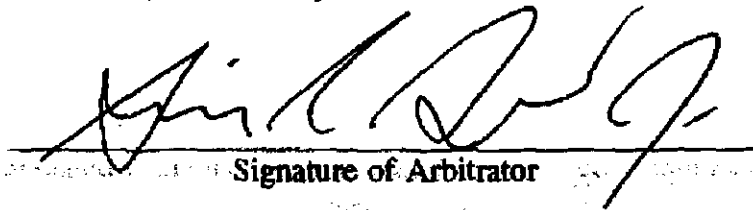
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Brent Dowdle against The Harriman Group, Inc. 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 Claimant shall be retained by the NASD, Inc. Respondent The Harriman Group, Inc. shall pay to the Claimant \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, , 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.



Signature of Arbitrator

**DATE OF DECISION:** September 10, 1996

### Report of Arbitrator

Claimant has alleged fraud in the sale of two securities, California Quartz, Inc. and Dr. Pepper/Seven Up Companies, Inc. Specifically, he alleges that Respondent induced the sale with the misrepresentation that he would receive "a 100% return on these investments in the short term." However, even if I were to conclude that such a representation was made, it would be legally insufficient to sustain a claim of fraud. A fraud claim can only be premised upon a false statement of fact. A representation regarding the likelihood of future events is the expression of an opinion, not a fact, and fraud cannot lie in the expression of opinion. The representations attributed to the Respondent's agents are regarded by the law as mere "puffing" which, while not worthy of admiration, are yet not grounds for sanction.

Claimant seeks punitive damages for Respondent's alleged failure to purchase shares of an initial public offering (IPO) in Tivoli Industries, Inc. As stated clearly in the prospectus, and as is commonly known in the securities industry, all purchases of an IPO are "subject to prior sale". There is never a guaranty that one who subscribes to an IPO will receive the securities. Moreover, Claimant has not furnished any information showing that he sustained damage as a result of the Tivoli Industries, Inc. transaction, or which would permit me to determine damages.

As to Respondent's counterclaim for attorneys' fees and costs, I note that Respondent has failed to offer any verified statements or affidavits in support of the statements made by counsel in its brief and motion. Nor has Respondent even attempted to provide evidence of its fees. The closest thing to evidence presented by Respondent is an unsworn copy of a new account form. The manner in which Respondent has responded to this claim - the "Motion to Dismiss", in particular, contains so many mistakes, missing sentences and parts of sentences as to make it nearly unintelligible-leaves this arbitrator to question how seriously the arbitration process is regarded by The Harriman Group, Inc.

All claims and counterclaims are hereby denied in their entirety, with all forum fees to be borne by the Respondent. The motion to dismiss is denied as moot.