

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John William Miller, II,

Elizabeth Sterling Miller
and Bartley Raymond Miller,
B.N.F. Carol T. Miller

and

John Bartley Miller, as Trustee
of FBO S.P. Davis Trust A.
FBO S.P. Davis Trust B, and
FBO S.P. Davis Trust C

92-01724

Name of Respondent(s)

The Robinson-Humphrey Co., Inc.
Richard King

REPRESENTATION

For Claimants: Edward H. Saunders, Esq. of the law firm of Wilson, Strickland & Benson, P.C.

For Respondents: Louise B. Matte, Esq. of the law firm of Sutherland, Asbill & Brennan.

CASE INFORMATION

Statement of Claim filed: May 21, 1992.

Amended Statement of Claim filed: November 5, 1992.

Claimant's Submission Agreement signed on: June 19, 1992.

The Respondent Richard King did not execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

The Respondent Robinson-Humphrey Co., Inc.'s Submission Agreement signed on: April 27, 1993.

Respondents' Answer and Counterclaim filed: July 30, 1992.

Respondents' Amended Answer and Counterclaim filed: November 20, 1992.

Response of John Bartley Miller to Respondents' Counterclaim filed: August 21, 1992.

Response of John Bartley Miller to Respondents' Amended Counterclaim filed: November 24, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: April 20, 1993 / Two Sessions
April 29, 1993 / One Session

Hearing Location: Atlanta, Georgia.

CASE SUMMARY

Claimants alleged the claim arises from the unsolicited sale by Respondents to the Trusts of Sixty Thousand Dollars (\$60,000.00) face amount of Florida Express 7-1/4% Convertible Subordinated Debentures (the "Subordinated Debentures") and the Subordinated Debentures were recommended and sold to the Trusts as a replacement for amounts invested in a Money Market Fund. Claimants further alleged no disclosure was made that there was any more risk involved with the Subordinated Debentures than with the Money Market Fund they replaced and the investment was at all times falsely described by Respondents as "Bonds", and their subordinated, unsecured and high risk nature was never disclosed. Claimants further alleged Respondents knowingly and willfully assisted Claimant Miller in misapplying the assets of the Trust; acted in a negligent manner and blatantly violated the NASD Rules of Fair Practice.

Respondents maintained they acted in good faith with respect to Claimants and the Trust accounts at all times; Respondents' recommendation was suitable for Claimants in light of Claimants' investment objectives as communicated to Respondents by John Bartley Miller; he was a knowledgeable, experienced and sophisticated investor clearly capable of evaluating Mr. Kings' recommendations and assessing the information Mr. King gave him regarding the merits, risks and other material facts surrounding the investment, both at the time of purchase and during the period when the Debentures were declining in value. Respondents further maintained Claimants have failed to state a claim upon which relief may be granted; Claimants are barred from recovering by the doctrines of waiver, ratification, estoppel, laches and the statute of limitations; are barred from recovering by their contributory negligence and assumption of the risk and no private right of action exists for alleged violations of the Rules of Fair Practice.

Respondents asserted a counterclaim against Claimant John Bartley Miller alleging to the extent the Debentures were unsuitable or inappropriate investments for the Trust, and/or that the purchase of same represented a misapplication of the Trusts' assets, Miller's purchase of same constitutes negligence, a breach of his duties as Trustee and a violation of the Georgia Trust Act, for which Miller is liable and he is liable under the theories of contribution and/or implied indemnity.

In response to the counterclaim, Claimant John Bartley Miller maintained he purchased the Debentures based purely on the oral representations of Mr. King and Mr. King failed to mention they were unsecured and a "high risk" type of investment and it was his understanding from Mr. King that these purchases were in accordance with the investment objectives of the Trusts.

RELIEF REQUESTED

Claimants requested damages to each of the Trusts of approximately \$16,000.00 plus interest, dividends and capital appreciation they would have earned if the funds had been properly invested; punitive damages in the amount of three times their actual damages plus attorneys' fees and costs for having to bring this action. Claimant John Bartley Miller further requested a dismissal of the counterclaim.

Respondents requested that Claimants' claims be dismissed in their entirety and that reasonable attorneys' fees and expenses incurred by Respondents in defending against Claimants' claims be assessed against Claimants. Respondents further requested that to the extent Claimants recover against Respondents, Respondents request an award against Claimant John Bartley Miller for actual damages plus expenses, including reasonable attorneys' fees and all costs of this action.

AWARD

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

1. During the hearing the Claimants' counsel informed the arbitration panel that the Claimants were dismissing without prejudice the claims against Respondent Richard King.
2. The Claimants' claims against The Robinson-Humphrey Co., Inc. be and hereby are dismissed in all respects.
3. The Respondents' counterclaim be and hereby is dismissed in all respects.
4. The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of 350.00 representing the balance of the adjournment fee.

5. Each party shall bear their respective costs including attorneys fees.

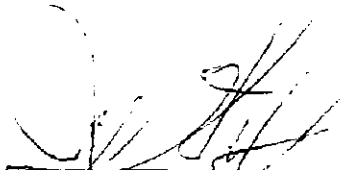
FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

3 sessions x \$750.00 = \$2,250.00 less Claimant's hearing session deposit
(\$750.00) less Respondents' hearing session deposit (\$750.00) = net \$750.00 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$375.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$375.00 to represent forum fees.

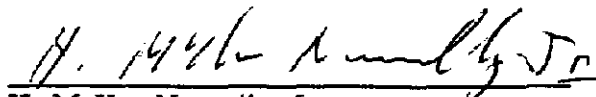
ARBITRATORS' SIGNATURE



James G. Killough
Public Arbitrator



Drew R. Fuller
Public Arbitrator



H. McKee Nunnally, Jr.
Industry Arbitrator

Decision Dated: May 19, 1993