

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Jerry Hering

93-00559

Name of Respondents

Jeff Cutler  
Franklin-Lord Inc.

---

**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 16, 1993, Claimant Jerry Hering, who appeared Pro Se, alleged that Respondent Jeff Cutler of the Respondent firm Franklin-Lord, Inc. failed to follow his instructions and sold without authorization his shares of Scorpion Technologies, which the Claimant did not want to sell. The Claimant further alleged that he had informed Respondent Jeff Cutler to notify him prior to executing any further trades, which he failed to do and that the stock rose in price after it was sold. The Claimant contended that due to the wrongdoing of the Respondent, he is entitled to payment of his lost profits.

Respondents Franklin-Lord, Inc. and Jeff Cutler, in a Joint Statement of Answer through their outside counsel, H. Thomas Fehn, Esq. of Fields Fehn & Sherwin, Los Angeles, CA, maintained that Respondent Jeff Cutler was following the customer's orders to sell the stock after it reached a "break even" position. The Respondents further maintained that if he had intended to hold onto the stock he could have repurchased it and sold it later at the profit he believes he is entitled to. The Respondents contended that they committed no wrong and should not be held liable in this matter.

**RELIEF REQUESTED**

Claimant Jerry Hering requested \$4,860.00 in actual damages, plus \$500.00 in attorney's fees and return of the NASD filing fee.

Respondents Franklin-Lord, Inc. and Jeff Cutler requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert Rankin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 2, 1993, by the Respondent Franklin-Lord, Inc. on April 21, 1993 and by Respondent Jeff Cutler on March 29, 1993.

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 Franklin-Lord, Inc. and Jeff Cutler are jointly and severally liable and shall pay to Claimant Jerry Hering \$1,660.00 in actual damages.
2. The parties shall bear their respective costs and attorney's fees.
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. Respondents Franklin-Lord, Inc. and Jeff Cutler are jointly and severally liable and shall pay \$150.00 to Claimant Jerry Hering as reimbursement of the filing fee.

### **AFFIRMATION**

I, ROBERT RANKIN, ESQ., 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.

  
\_\_\_\_\_  
Robert Rankin, Esq.

DATE OF DECISION: September 29, 1993