

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jordon Kreiner

93-04557

Name of Respondents

Kevin Cesioio O'Dowd
The Robinson-Humphrey Company, Inc.

REPRESENTATION

For Claimant, Jordan Kreiner ("Claimant"), appeared Mark Pearlstein, Esq., from Stuart D. Fiel & Associates located in Philadelphia, PA.

For Respondent, Kevin C. O'Dowd and The Robinson-Humphrey Company, Inc. ("Respondents"), appeared Paul Giappone, Esq., from Smith Barney Shearson, Inc., located in New York.

CASE INFORMATION

Statement of Claim filed: October 29, 1993.

Claimant's Submission Agreement signed on: October 29, 1993.

Statement of Answer filed by Respondents on: February 9, 1994.

Respondents' Submission Agreement signed on: February 10, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	November 15, 1994	--	2 sessions
	January 17, 1995	--	2 sessions

Hearing Location: The hearings were held at the Ritz-Carlton Hotel in Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleged that he had very limited investment sophistication, consisting solely of continuous stock purchases, without sale, in A.L. Williams Company, Common Sense Growth Fund, and IRA, Keogh Accounts in Pioneer II Fund. Claimant alleged that during the course of his trading with Respondents, he was caused to transfer his entire investment of \$87,086.00 to Respondents in order to cover Respondents' margin trading. Claimant further alleged that Respondents never thoroughly explained to Claimant the risks involved in margin trading or that the investment strategy was unsuitable for him.

Further, Claimants alleged that during the time that he maintained an account with Robinson-Humphrey Co., Respondents engaged in numerous fraudulent, unlawful acts and breaches of contractual obligations by engaging in practices including effecting margin trades in Claimant's account prior to the execution of the "Client Agreement"; failing to ascertain claimant's financial worth and yearly net income to decide if margin trading was suitable for Claimant; directing Claimant to ignore margin calls on his account; churning Claimant's account in order to generate sizable commissions; directing and effecting unauthorized and defacto discretionary trades in Claimant's account without implementing the proper procedures; directing and effecting unsuitable trades in Claimant's account; misrepresenting and/or failing to disclose material facts and failing to supervise Claimant's account and the account executive, O'Dowd. Claimant alleged that these unlawful activities constitute violations of the Federal Securities Law and applicable state law breaches of the Rules of the New York Stock Exchange and the National Association of Securities Dealers.

Claimant alleged that he informed O'Dowd that he had never traded on margin, but O'Dowd explained that Claimant could make large profits with relatively little investment through margin trading. Claimant further alleged that Robinson-Humphrey company is liable jointly and severally for losses suffered as a result of violations by O'Dowd of Federal Securities Laws and Regulations because O'Dowd was negligently supervised and inadequate measures to ensure compliance with the law were not undertaken.

Respondents denied all allegations of wrongdoing asserted against them by Claimant and maintained that the trading in the account was entirely consistent with the desires and objectives of claimant and his financial resources.

Respondents maintained that Claimant is currently a registered principal with Primerica Financial Services, Inc. and has his Series 6, Series 26 and Series 63 licenses. Respondents further maintained that Claimant is certainly well acquainted with the securities industry, trading in securities, margin, etc. Respondents maintained that upon opening his account with Respondents, Claimant disclosed that he had an estimated net worth of \$300,000.00, earnings of \$250,000.00 per year and an estimated liquid net worth of \$100,000.00 and that his investment

objective was Aggressive Growth which was indicated on his new account form. Respondents further maintained that in December 1988 Claimant modified his account to include option trading with objectives being Appreciation of Risk, Speculation, Income with Safety and Income with Risk.

Respondents contended that for each trade executed, Claimant had discussions with O'Dowd and all purchases were undertaken with his permission and were consistent with Claimant's investment objectives. Respondents maintained that they did not exercise discretionary control over the account and they did not misrepresent facts relating to the account. Respondents further maintained that the risks of using margin were specifically explained to the Claimant prior to any transactions.

As affirmative defenses, Respondents asserted that the Claimant failed to state a claim upon which relief can be granted; Claimant was fully aware of risks of profits and losses associated with investing and voluntarily assumed such risk; Claimant is barred from recovering under the doctrines of ratification, account stated, estoppel, waiver and laches because Respondents relied upon the silence of the Claimant who traded with full knowledge; Claimant failed to act with due diligence to mitigate his damages; Claimant gave no indication of dissatisfaction with the investments; any losses sustained were proximately caused by Claimant's conduct and negligence; Claimant failed to timely notify respondents of any complaint as required by the Customer Agreements executed by them; securities fraud claims are barred because Respondents did not act with scienter; Claimant's claims are barred by the applicable statute of limitations; Respondents did not owe a fiduciary duty to Claimant because the accounts were nondiscretionary; Respondents substantially complied with all of the terms and conditions of the contracts.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$68,467.62; \$4,186.00 for penalties and interest on Keogh early distribution; loss of future value of principal in the amount of \$355,954.00; pre and post award interest; punitive damages in an amount the arbitrators deem appropriate; all of Claimant's costs, expenses and disbursements including reasonable attorney's fees.

Respondents requested that the Statement of Claim should be dismissed in its entirety, and Respondents should be awarded such costs and fees as the Panel deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

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. Respondents be and hereby are jointly and severally liable and shall pay to Claimant the sum of \$5,000.00.
2. Each party shall bear their respective costs, including attorneys' fees.
3. The filing fee shall be apportioned equally between the Claimant and the Respondents.
4. The session fees shall be apportioned equally between the Claimant and the Respondents.

FORUM FEES

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

Nonrefundable filing fee:	\$ 200.00
Hearing Session Deposit (\$750 x 4 sessions):	\$3000.00
Total Fees:	\$3200.00

1. Claimant paid \$950.00. Claimant be and hereby is liable and shall pay to the NASD the sum of \$650.00 representing one-half of the outstanding forum fees.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$1200.00 representing one-half of the outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Victoria E. Johnson
Victoria E. Johnson

Public/Industry

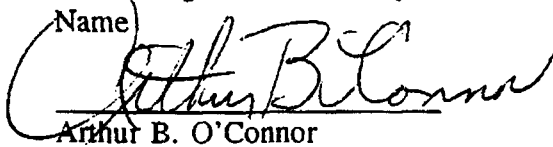
Public

Date of Decision: 3/9/94

NASD Date of Decision: March 15, 1995

Concurring Arbitrators' Signatures

Name


Arthur B. O'Connor

Public/Industry

NASD Date of Decision: March 15, 1995

Concurring Arbitrators' Signatures

Name



Guillermo L. Bosch, Esq.

Public/Industry

NASD Date of Decision: March 15, 1995