

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Richard G. Gibby

93-05083

Name of Respondents

Timothy E. Young  
Franklin Lord, Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on December 8, 1993, Claimant Richard G. Gibby, through his representative Robert M. Roth, alleged that he had no investment experience prior to opening an account with Respondent Timothy E. Young ("Young"), a broker at Respondent Franklin Lord, Inc. Claimant further alleged that Respondent Young, while employed by Respondent Franklin Lord, Inc., engaged in a series of unauthorized transactions that caused Claimant to lose the entire equity in his account. Claimant contended that Respondents purchased 1700 shares of Interactive Network, Inc. on margin without his authorization. Claimant further contended that less than two weeks after this purchase, Respondents sold 2700 shares of Interactive Network, Inc. stock from his account and two days later bought back 1500 shares of this stock on margin. Claimant further contended that Claimant never executed a margin agreement with Respondents, and that Respondent Franklin Lord, Inc. was a market maker in the stock in question. Claimant alleged that Respondents fraudulently made misleading statements to Claimant, and failed to exercise prudence in recommending suitable securities. In his response to Respondents' answer, Claimant further alleged that Respondents failed to execute his sell order of the stock in question. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents Franklin Lord, Inc. and Timothy E. Young, through their counsel

H. Thomas Fehn, Esq., of Fields, Fehn & Sherwin, Los Angeles, California, denied each allegation made by Claimant in his Statement of Claim. Respondents maintained that Claimant's business partner, a Mr. Hull, has brought exactly the same claim against the Respondents and is represented by the same arbitration consultant. Respondents further maintained that Claimant understood the risk and was lead in his decision to invest in the stock in question by his business partner, Mr. Hull. Respondents contended that Claimant understood and executed the margin agreement. Respondents further contended that Claimant received a monthly statement for his account for each month that it was opened and received confirmation of all trades which were executed. Respondents contended that Claimant "knew exactly what he was doing". As a result of the above, Respondents maintained that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Richard G. Gibby requested at least \$10,000.00 in actual damages, pre-award and post-award interest at 10% from the date of the original investment, and costs.

Respondents Franklin Lord, Inc. and Timothy E. Young requested that the claims of the Claimant be dismissed in their entirety, and that they be awarded \$750.00 in costs and attorney's fees.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Renee P. Roelants, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 26, 1993 and by the Respondents on February 10, 1994.

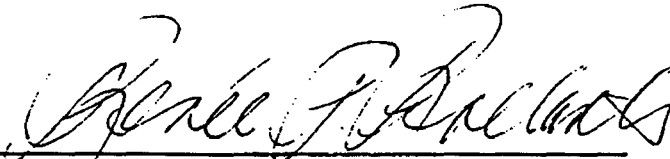
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Richard G. Gibby against Respondents Franklin Lord, Inc. and Timothy E. Young are dismissed in their entirety.
2. The parties shall bear their respective costs, including 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 Timothy E. Young are jointly and severally liable and shall pay to Claimant Richard G. Gibby \$75.00 as partial reimbursement of the filing fee.

**AFFIRMATION**

I, **RENEE P. ROELANTS**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

**DATE OF DECISION:**

November 29, 1994