

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Shawn Hull

93-05084

Name of Respondents

Franklin-Lord, Inc.
Timothy E. Young

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 8, 1993, Claimant Shawn Hull, through his representative, Robert M. Roth and Associates, Appleton, WI, alleged that Respondents Franklin-Lord, Inc. and Timothy E. Young committed numerous securities law violations which damaged the Claimant. Claimant further alleged that he had purchased 1,100 shares of Interactive Network from Respondent Young when Mr. Young had been at a previous brokerage firm before becoming employed by Respondent Franklin-Lord, Inc. Claimant contended that Young knew that he had very limited assets but highly touted the upside potential of this speculative stock without disclosing the significant risk. Claimant further contended that when Young moved to Franklin he began a series of unauthorized transactions that caused Claimant to lose the entire equity in his account. Claimant alleged that on January 27, 1993, Young, without authority from the Claimant, purchased 800 shares of Interactive on margin creating a debit balance of over \$10,020.00 and marked the confirmation "unsolicited", a complete falsehood. Claimant further alleged that less than 2 weeks later, Young sold 800 shares in the account and then, 2 weeks after that, bought back 700 shares on margin with all the trades being unauthorized and fictitiously marked unsolicited. Later, when Claimant wanted to sell the stock, he contended that Young refused to execute the sell order. Claimant further contended that by March, 1993, the stock plunged to \$4.75 which created a margin call in the account and the entire position in Interactive had to be sold to cover the margin debt which completely wiped out the entire equity in the account. Claimant further contended that Respondents' fraud, deceit, misrepresentation, omission of material fact, recommendation of an unsuitable investment, violation of the NASD Rule of Fair Practice, breach of fiduciary duty, negligence, and breach of the implied covenant of good faith and fair dealing has caused him a loss for which Respondents should be held liable.

Respondents Franklin-Lord, Inc. and Timothy Young, through their representative H. Thomas Fehn, Esq. of Fields, Fehn and Sherwin, Los Angeles, CA, maintained that the Claimant approached Respondent Young on an unsolicited basis having been referred to Respondent Young by his business partner, Mr. Gibby. Respondents further maintained that Claimant understood the risk and knew exactly what he was doing. Respondents contended that Claimant understood and executed the margin agreement and determined to invest in Interactive for both the long term and as a speculative trading strategy. Respondents further contended that Claimant received a monthly statement for his account for each month and received confirmations of all trades which were executed. Respondents maintained that all of the transactions were authorized by the Claimant and that they never received a sell order from the Claimant.

In their counterclaim, Respondents maintained that matters set forth in the Statement of Claim gave rise to the existence of an unsecured and unpaid debt in the account of the Claimant in the amount of \$4,435.87. Respondents further maintained that despite repeated demands that this be paid, Claimant has refused to pay any sums at all.

In Claimant's response to the Respondents' Statement of Answer and Counterclaim, Claimant denies any liability for any debit balance in his account. Claimant alleged that no documentary evidence of any type has been provided to show any balance of any type has ever existed. Claimant further alleged that any such balance would have been a result of the inappropriate and unauthorized actions of Respondent Young.

RELIEF REQUESTED

Claimant Shawn Hull requested \$7,066.00 in actual damages, plus pre and post award interest at 10% and costs and expenses of arbitration.

Respondents Franklin-Lord, Inc. and Timothy Young requested that the claims of the Claimant be dismissed and that they be awarded costs and reasonable attorney's fees in the amount of \$750.00, and further that Franklin-Lord, Inc. be awarded \$4,435.87 in connection with its counterclaim.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Steven M. Venezia, Esq., was selected to review 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 the Claimant Shawn Hull against Respondents Franklin-Lord, Inc. and Timothy Young are dismissed in their entirety.
2. The counterclaim of the Respondents Franklin-Lord, Inc. and Timothy Young are dismissed in their entirety.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by Claimant Shawn Hull shall be retained by the NASD, Inc.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by Respondents Franklin-Lord, Inc. and Timothy Young for the Counterclaim shall be retained by the NASD, Inc.

Page Four
Award 93-05084

AFFIRMATION

I, STEVEN VENEZIA, ESQ., do hereby affirm upon my oath that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: December 13, 1994