

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant(s)**

**Ellis J. and Seena I. Morton**

**93-05175**

**Name of Respondent(s)**

**The Robinson-Humphrey Company, Inc.  
Frank Stevenson**

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**REPRESENTATION**

**For Claimants Ellis J. and Seena I. Morton: J. Pat Sadler, Esq. of the law firm of Sadler and Associates, Inc., Atlanta, GA.**

**For Respondents The Robinson-Humphrey Company, Inc. and Frank Stevenson: John P. Bevilacqua, Esq., in-house counsel for Smith Barney/Shearson, Inc.**

**CASE INFORMATION**

**Statement of Claim filed: December 14, 1993.**

**Claimants' Submission Agreement signed on: November 17, 1993.**

**Joint Statement of Answer filed by Respondents The Robinson-Humphrey Company, Inc. and Frank Stevenson on: March 7, 1994.**

**Respondent The Robinson-Humphrey Company's Submission Agreement signed on: March 1, 1994.**

**Respondent Frank Stevenson's Submission Agreement signed on: April 25, 1994.**

**HEARING INFORMATION**

Hearing Dates/Sessions: November 9, 1994 / Two Sessions  
November 10, 1994 / One Session

Hearing Location: NASD offices located in Atlanta, GA.

**CASE SUMMARY**

Claimants alleged that the actions of Respondents constituted violations of the securities laws and securities fraud; Respondents made misrepresentations of material facts and failed to inform Claimants of material facts; Respondents recommended investments that were unsuitable for the Claimants; and, Respondents engaged in common law fraud and negligence and breached the fiduciary duty owed to Claimants.

Claimants further alleged they stressed to Frank Stevenson, an account executive at The Robinson-Humphrey Company, Inc., that they were unwilling to purchase even slightly risky investments and that an investment which carried the risk of capital loss would not be suitable for them due to their previous investment losses and their pending retirement. Claimants further alleged that Frank Stevenson proposed that the Claimants invest in Winterset Associates ("Winterset"), a real estate limited partnership, and Mr. Stevenson represented that this investment was of high quality with infinitesimal risk and guaranteed the investment would be worth \$150,000.00 within five to seven years. Claimants further alleged that subsequently they invested, over a period of time, \$61,600.00 in Winterset and Winterset, on February 12, 1993, filed a petition for protection under Chapter 11 of the U.S. Bankruptcy Code and Claimants contend that their investment has become worthless or virtually worthless.

Respondents denied that any misrepresentations were made to Claimants and maintained that they provided Claimants with a prospectus detailing the potential risks and rewards accompanying an investment in Winterset. Furthermore, Respondents maintained that the allegations that Respondents guaranteed a specific return is not only ludicrous but clearly belied by the express written provisions of the prospectus.

Regarding the unsuitability claim, Respondents maintained that the Claimants executed a subscription agreement in order to be accepted as subscribers to the limited partnership interest in Winterset Associates wherein the Claimants warranted and represented that they met all of the minimum suitability requirements for subscribers to Winterset.

Respondents further maintained any losses allegedly incurred by Claimants were caused by market forces beyond Respondents' control or were the result of Claimants' own actions and further maintained Claimants are not entitled to punitive damages under the laws of New York, which governs this proceeding pursuant to the Client Agreement executed by Claimants.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$61,600.00; punitive damages of \$123,200.00; interest compounded annually at the rate of 12% in the amount of \$48,899.00; costs and expenses of approximately \$1,950.00 and such other and further relief as the panel deems just and appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs, including reasonable attorneys' fees incurred in defending this action.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The Respondents made a motion to the panel of arbitrators to reconsider the ruling of the Director of Arbitration that purchases made on or after December 14, 1987 and claims regarding those purchases would be considered by the panel of arbitrators and allegations of wrongdoing made prior to that time were not eligible.

The arbitration panel concurred with the decision of the Director of Arbitration.

#### **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. The Claimants' claims be and hereby are dismissed in all respects.
2. The Claimants' request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

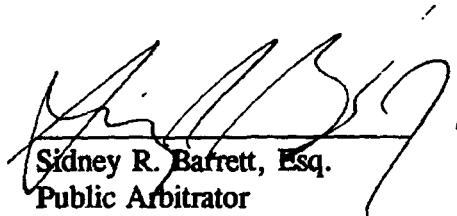
Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

3 sessions x \$750.00 = \$2,250.00 less Claimants' hearing session  
deposit (\$750.00) = net \$1,500.00 due.

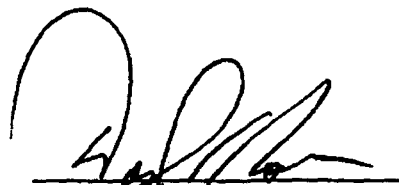
The Respondent The Robinson-Humphrey Company, Inc. be and hereby is liable and shall pay to the NASD the sum of \$1,500.00 representing the balance of the forum fees.

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


**ARBITRATORS' SIGNATURE**



Sidney R. Barrett, Esq.  
Public Arbitrator



Douglas T. Noonan, Esq.  
Public Arbitrator



Barry M. Clause  
Industry Arbitrator

Date of Decision: January 11, 1995