

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Joanne A. DuPont,  
Claimant,

v.

Franklin-Lord, Inc., and  
Brian Lloyd Gibbons,  
Respondents

and

No. 94-00508

Franklin-Lord, Inc.  
Crossclaimant

v.

Brian Lloyd Gibbons,  
Crossrespondent

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**REPRESENTATION OF PARTIES**

Claimant Joanne A. Dupont ("Claimant") was represented by Frank Lewis, Esq., of Begam, Lewis, Marks, Wolfe & Dasse, Phoenix, Arizona.

Respondent Franklin-Lord, Inc. ("Franklin-Lord") was represented by H. Thomas Fehn, Esq., of Fields, Fehn & Sherwin, Los Angeles, California.

Respondent Brian Lloyd Gibbons ("Gibbons") appeared on his own behalf.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about February 2, 1994. Claimant's Submission Agreement was signed on January 28, 1994.

Franklin-Lord's Answer and Crossclaim was filed on or about April 29, 1994. Franklin-Lord's Submission Agreement was signed on April 29, 1994.

Gibbons Answer to all causes of action was filed on or about October 31, 1994. Gibbon's Submission Agreement was signed on October 27, 1994.

Referral to arbitration by Order of Maricopa County Superior Court dated January 18, 1995.

HEARING INFORMATION

Pre-Hearing conference  
date(s):

March 14, 1995. One (1) session.

Hearing dates:

April 25, 1995. Two (2) sessions.

April 26, 1995. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

For her First, Second, and Third causes of actions, Claimant asserted that Respondents Franklin-Lord and Gibbons violated A.R.S. Sections 44-1841, 44-1991 et seq., 13-2301 et seq., and violated the Arizona Consumer Fraud Statute, Paragraph 44-1521 A.R.S. et seq.. Claimant alleged that Gibbons made untrue statements of material facts and omitted to state material facts in his dealings with Claimant, and that Gibbons had also employed schemes or artifices to defraud Claimant in connection with her account. Claimant also alleged that Franklin-Lord failed to supervise Gibbons in relation to Claimant's account, and, along with Gibbons breached their fiduciary duty owed to the Claimant. Claimant further alleged that Gibbons had induced her to invest in Busline Media enterprise ("BMC"), and that Franklin-Lord and Gibbons had received financial gain because of the investment. Lastly, Claimant alleged that Gibbons had churned her account. The allegations and claims arose out of the Claimant's investment in BMC, and transactions in other securities more fully discussed at the hearing in this matter.

Franklin-Lord, unless otherwise admitted therein, denied each and every allegation contained in the Statement of Claim. Franklin-Lord asserted that: It knew nothing about Claimant's investment in BMC; Franklin-Lord never participated in any way in such a transaction; Franklin-Lord had advised all of its brokers that BMC was not approved by the firm and could not be sold to its customers; Gibbons did not participate in the sale of BMC to Claimant; Claimant is a sophisticated investor; all of the activity in the account was authorized by the Claimant; Claimant never complained to anyone at Franklin-Lord about any aspect of her account; and that Franklin-Lord had supervised Gibbons activities and no irregularities were detected.

Gibbons, unless admitted in his Answer, denied the allegations in the Statement of Claim. Gibbons stated that he became aware of BMC through George Looschen, President of Franklin-Lord Financial Services which

operated out of the offices of Franklin-Lord, Inc. Gibbons asserted that one of Claimant's objectives was income, and Mr. Looschen had said that BMC was an income investment that paid 20.4% and was being promoted by Franklin-Lord, Inc. Gibbons further stated that an appointment between Mr. Looschen and the Claimant was set up, and that out of the meeting, in which he did not participate, claimant made her first investment in BMC. Gibbons also asserted that it was the Claimant who ordered the second purchase of BMC, as well as the liquidation and the transfer of her account from another brokerage firm. Gibbons further stated that to his knowledge, none of the commissions charged exceeded NASD guidelines, and in any event, Gibbons was not privy as to how they traded stocks or by what means stocks were traded. Lastly, Gibbons stated that anytime there were cash balances in Claimant's account, they automatically rolled into a reserve account that generated interest continually, and that he did not personally benefit from any cash in the account at any time.

#### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in the amount of \$324,750.00, prejudgment interest at the rate of 10% per annum, the return of all commissions and mark-ups, treble damages, punitive damages, attorneys' fees and costs of this action.

Franklin-Lord requested that the claim be denied in its entirety. In addition, Franklin-Lord asserted a Crossclaim against Gibbons for the right to be indemnified in the event it is held responsible for the activities described in the Statement of Claim.

Gibbons requested that the claims be denied.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) 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 Franklin-Lord, Inc. and Brian Lloyd Gibbons are, and each of them, jointly and severally liable for, and shall pay to the Claimant, Joanne A. DuPont, the sum of \$365,029.00, as an award of compensatory damages, plus interest thereon at the rate of 10% per annum to accrue from the date of the Award until paid.

2. All other claims not expressly covered by the Award are, and each of them, denied and dismissed with prejudice.

**OTHER COSTS**

Each party shall bear its own costs and expenses associated with this arbitration.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

2 pre-hearing conference session x \$600.00 = \$600.00

4 hearing sessions x \$1,000.00.00 = \$4,000.00

Total hearing sessions to be assessed = \$4,600.00

Pursuant to the January 18, 1994, Order of the Maricopa County Superior Court, Franklin-Lord is responsible for the initial filing fees.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable claim filing fee in the amount of \$250.00 and shall retain the claim hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by Franklin-Lord.

Pursuant to Sections 43(c) and 25 (b) (1), Franklin-Lord is liable for, and shall pay to the NASD the sum of \$250.00 as its Crossclaim filing fee.

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Pursuant to Section 45 of the Code, the NASD shall retain the member surcharge in the amount of \$350.00 previously paid to the NASD by Franklin-Lord.

Additional forum fees in the amount of \$3,600.00 are assessed against Franklin-Lord.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

June 12, 1995

James Kneller /s/  
James Kneller  
Presiding Chair  
Public Arbitrator

June 8, 1995

Douglas E. McArthur /s/  
Douglas E. McArthur  
Industry Arbitrator

June 8, 1995

Joel A. Gildar /s/  
Joel A. Gildar  
Public Arbitrator