

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Robert P. Croley and Jane M. Croley

94-01097

Names of Respondents

Quick and Reilly, Inc.  
Jay Kuhar

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**REPRESENTATION**

For Claimants, Robert P. and Jane M. Croley ("The Croleys"): Ira C. Hatch, Esq. of Ira C. Hatch, P.A., Ft. Lauderdale, Florida.

For Respondents, Quick & Reilly, ("Q & R") and Jay Kuhar ("Kuhar"): Nicholas J. Chohey of Quick & Reilly.

**CASE INFORMATION**

Statement of Claim filed on March 16, 1994. Claimants' Submission Agreement signed on November 30, 1993.

Respondents' Joint Statement of Answer filed on May 12, 1994. Respondents' Submission Agreement signed on May 12, 1994 by Robert Bott on behalf of Q & R and on April 11, 1994 by Respondent, Kuhar.

**HEARING INFORMATION**

On July 25, 1995, in Fort Lauderdale, Florida, a hearing lasting (2) sessions was conducted with the Arbitrators.

**CASE SUMMARY**

Claimants alleged that a dispute arose when the Claimants, as young, unsophisticated and uninformed customers of Respondent, Q & R came to trust and rely upon its agent/broker, Kuhar; that the agent developed a rapport with the Claimant by phoning several times a day at Claimant's business to discuss the

market; that after about five months Claimants believed, relied upon and followed the advise of Kuhar and his "one point" theory to their detriment and financial loss of \$29,179.74. Claimants further alleged that Respondents churned their account and that transactions took place without Claimants' knowledge and that, additionally, Respondents violated the NASD Rules of Fair Practice and the NYSE Rule of "know your customer".

Respondents Q & R and Kuhar denied that Kuhar had advised the Claimants in any way regarding their investments. Additionally, Respondents asserted that they were not negligent by allowing the Claimants to trade their account for the following reasons: (1). The Claimants had signed an agreement stating they understood that the Respondents were not financial advisors; (2). The Claimants never said or implied anything to indicate that they were in financial trouble or dealing with limited income; (3). The Respondents did not solicit any trades and therefore, by definition could not have churned the account; (4). Jay Kuhar did not exclusively handle the Claimants account.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$30,710.43 (as amended at the hearing) plus punitive damages.

Respondents requested dismissal of the Claim.

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

The parties have agreed that the Award in this matter may be executed in 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 originals remain on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Q & R and Kuhar, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$29,179.74, plus interest at the legal rate of 12% per annum from 7-31-93 to 7-25-95.
2. Claimants' request for punitive damages is denied.

**OTHER COSTS**

Apart from the Forum Fees assessed below, the parties shall each bear their own costs and expenses incurred in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Arbitrators have assessed Forum Fees in the amount of \$1,000.00 (two (2) hearing sessions X \$500.00).

1. Respondents are hereby assessed, jointly and severally, Forum Fees in the amount of \$1,000.00, \$500.00 of which shall be paid directly to the Claimants and the remaining \$500.00 to be paid to the NASD, Inc.
2. Respondents shall pay to the NASD the postponement fee of \$500.00 for the postponement granted by the Panel on April 10, 1995.
3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.
4. The NASD shall refund Claimants \$450.00 which represents a return of fees that were overpaid by the Claimants.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/

\_\_\_\_\_  
Gary M. Landau, Esq.

Public/Chairman

/s/

\_\_\_\_\_  
Aubie Baltin

Public/Panelist

/s/

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Albert A. Rapoport, Esq.

Industry/Panelist

Date of Decision: September 12, 1995