

9810134

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Woodrow Stewart

vs

Case No.
95-03040

Name of Respondents

Josephthal Lyon & Ross, Inc.
f/k/a Rosenkranz, Lyon & Ross, Inc.
GKN Securities Corp.
JW Charles Securities, Inc.
f/k/a Corporate Securities Group, Inc.
Joseph Roberts & Co., Inc.
Mitchell Held

REPRESENTATION

For Claimant Woodrow Stewart ("Claimant"), Benjamin P. Brown, Esq. from the law firm of Heinrich Gordon Hargrove Weihe & James located in Palm Beach, Florida.

For Respondent Josephthal Lyon & Ross, Inc. ("JLR"), Robert E. Murphy, Esq., in-house counsel at JLR, located in New York, New York.

For Respondent GKN Securities Corp. ("GKN"), Katherine Nathan, Esq., in-house counsel at GKN located in New York, New York.

For Respondent JW Charles Securities, Inc. ("JW Charles") and Mitchell Held ("Held"), Gregory Tendrich, Esq., in-house counsel at JW Charles located in Palm Beach, Florida. Mr. Tendrich, Esq. represented Held until January 2, 1997, Neil S. Baritz, Esq. represented Held thereafter.

For Respondent Joseph Roberts & Co., Inc. ("Joseph Roberts") Neil S. Baritz, Esq. from the law firm of Dreier & Baritz located in Boca Raton, Florida.

CASE INFORMATION

Claimant's Statement of Claim was filed on June 19, 1995.

Claimant's Submission Agreement was signed on June 22, 1995.

Page 2
Case No. 95-03040

JLR's Statement of Answer was filed on September 14, 1995.
JLR's Submission Agreement was signed on September 14, 1995

GKN's Statement of Answer was filed on August 11, 1995.
GKN's Submission Agreement was signed on August 11, 1995.

Joint Statement of Answer was filed by JW Charles and Held on August 30, 1995
JW Charles' Submission Agreement was signed on August 30, 1995
Held's Submission Agreement was signed on August 30, 1995.

Joseph Roberts' Statement of Answer was filed on September 15, 1995.
Joseph Roberts' Submission Agreement was signed on September 11, 1995.

HEARING INFORMATION

Pre-Hearing Conferences:	September 10, 1996	-	1 session
	February 18, 1997		1 session
	June 10, 1988		1 session (Full Panel)
Hearing Date/Session:	August 12, 1998		1 session

The hearings were conducted by telephone conference

CASE SUMMARY

Claimant states that in 1990 he became disabled, and as a result of his disability, received disability payments. Claimant also states that he used his disability payments to purchase conservative investments, such a "CMO" with a 9.9% fixed rate and tax exempt bonds. In a five count Statement of Claim, Claimant further states that between 1991 and 1995, his broker, Held, was employed by JLR, GKN, JW Charles, and Joseph Roberts and that these firms are liable to Claimant for damages as a result of Held's excessive, unauthorized, and unsuitable trading in Claimant's account.

Claimant alleges that in 1991, he received a "cold call" from Held, who at that time was a broker at JLR. Claimant also alleges that in numerous high pressure follow up calls, Held represented to Claimant that Claimant could obtain a higher rate of return on his investment in funds that were safe, conservative, and with minimal risk. Claimant further alleges that he told Held that his funds were obtained from his disability payments, which could not be replaced. Claimant contends that Held, knowing that Claimant was unsophisticated, recommended that Claimant invest in initial public offerings ("IPOs") or recent issues and warrants and trade on margin in stocks such as Dynagen, ACT II, Novatek. Claimant also contends that Held failed

failed to inform him about the risks of trading on margin and about the risks involved in the investments. Claimant further contends that Held churned his account, Claimant states that although his account had an average monthly balance of \$47,715, Held recommended purchases exceeding \$266,000, for a turnover ratio of 5.6 and at varying higher rates during the life of the account. Claimant also states that between 1991 and 1995, he entrusted more than \$75,000 with Held and that by the end of 1994, he had lost more than \$31,000.

JLR denies liability and the allegations of wrongdoing.

GKN denies each and every allegations in the Statement of Claim and denies liability. GKN states that in April 1992 when Claimant transferred his account from JLR to GKN, the account had portfolio value of \$96,647, a margin debit balance of \$29,926.36, and a market value of \$66,721. GKN also states that Claimant signed a margin agreement, and Claimant's Report of New Account lists Claimant's approximate annual income as \$70,000, net worth as \$1,500,000 and investment objective as "growth/speculation".

GKN maintains that Claimant's allegation of unsuitable transaction is without merit because Claimant discussed and authorized each of the transactions in his account. GKN also maintains that Held's recommendations to sell the CMOs resulted in a larger gain for Claimant than Claimant would have realized had Claimant held the positions until they were called. GKN further maintains that Claimant did not complain to a GKN supervisory personnel about Held's handling of Claimant's account.

In their joint Statement of Answer, JW Charles and Held (collectively "Respondents") deny the allegations and liability and assert twenty-six affirmative defenses. Respondents argue that Claimant is a highly experienced and sophisticated investor, who constantly boasted about his real estate holdings, "venture capital" income and keen eye towards IPOs. Respondents maintain that Claimant constantly told Held about his satisfaction and approval with the trading in his account and his need for "quick and high returns", but failed to notify JW Charles supervisory personnel of his dissatisfaction with Held's handling of the account. Respondents also maintain that Claimant could have had a greater profit with the Dynagen shares had he held the stock. Respondents further maintain that during the nearly seventeen months that Claimant had his account at JW Charles, he realized a total gain of approximately \$6,572.61.

Joseph Roberts denies the allegations of wrongdoing and liability and asserts six affirmative defenses. Joseph Roberts contends that Claimant's losses were a result of market condition, which were mitigated by the fact that they granted Claimant favorable allocations in the firm's underwriting of a successful public offering. Additionally, Joseph Roberts contends that Claimant received a written confirmation of each trade on a timely basis and made full payment for each security purchased.

RELIEF REOLJESTED

Claimant requests an award of damages against all Respondents, together with interest, attorney's fees and costs and such other and further relief as the arbitration may deem appropriate, including but not limited to, rescission.

All Respondents request dismissal of the action. JLR requests reimbursement for its costs and expenses in defending this matter. GKN requests that costs of the proceeding be assessed against Claimant. JW Charles and Held request an award of attorney's fees, costs and other relief as the panel deems just, proper, and equitable.

OTHER ISSUES CONSIDERED & DECIDED

Claimant, the only party who participated in the August 12, 1998 hearing, has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered and to receive conformed copies of the Award while the original remains on file with the NASD.

In a May 7, 1996 letter, Claimant informed NASD Regulation that he had voluntarily dismissed and withdrawn his claims against GKN. By letter dated October 21, 1997, Claimant informed NASD Regulation that he had settled with JLR and JW Charles. On August 11, 1998, Claimant filed a Notice of Voluntary Dismissal with Prejudice as to Held.

In an April 13, 1998 letter, Claimant requested that this panel allow Claimant to present his case by telephone. After due deliberation, this panel granted that request.

Joseph Roberts did not participate in the August 12 hearing, and this panel made the following determinations:

1. Pursuant to Rule 10101 of the *Code of Arbitration Procedure* ("Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Joseph Roberts was a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Joseph Roberts pursuant to Rule 10301 of the *Code*.
3. In addition, in accordance with Rules 10301, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Joseph Roberts with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the telephonic hearing without Joseph Roberts whose absences was unexcused.

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. Respondent Joseph Roberts is hereby liable and shall pay Claimant \$49,088.00;
2. Respondent Joseph Roberts is hereby liable and shall pay Claimant \$3,395.00 in interest; and,
3. All other claims for relief are denied.

OTHER COSTS

Pursuant to Rule 10333 of the *Code*, JLR and JW Charles have each paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced. Respondents GKN and Joseph Roberts did not pay the member surcharge. Therefore, pursuant to Rule 10333 of the *Code*, each Respondent owes NASD Regulation a \$350.00 surcharge.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees against Joseph Roberts:

Pre-Hearing Conferences:	
With Chairperson -	\$600.00 (2 sessions @ \$300 per session)
With Full Panel -	600.00 (1 session @ \$600 per session)
Hearing Session	600.00
 Total Fees	 \$1800.00

1. Claimant is assessed a \$600.00 postponement fee for the postponement of the hearings previously set to start on February 18, 1997. Claimant previously deposited \$600.00, which will be applied to the fee assessed against Claimant.

Fees are payable to NASD Regulation, Inc

Page 7
Case No. 95-03040

ARBITRATION PANEL

Robert D. Herschman, Esq.	-	Public/Industry Chairperson
Diana L. Friedman	-	Public Arbitrator
Robina Fedora Asti	-	Industry Arbitrator

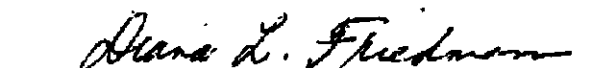
CONCURRING ARBITRATOR'S SIGNATURE



Diana L. Friedman

Date of decision: October 2, 1998

I, Diana L. Friedman, do hereby **affirm**, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual describe&herein and who executed this instrument which is my award.



Diana L. Friedman

9810134

Page 6
Case No. 95-03040

ARBITRATION PANEL

Robert D. Herschman, Esq. -	Public Chairperson
Diana L. Friedman	public Panelist
Robina Fedora Asti	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE


Robert D. Herschman, Esq.

Date of decision: October 2, 1998

I, Robert D. Herschman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Robert D. Herschman, Esq.


9810134

Page 8
Case No. 95-03040

ARBITRATION PANEL


Robert D. Herschman, Esq.		Public Chairperson
Diana L. Friedman	-	Public Panelist
Robina Fedora Asti	-	Industry Panelist

NEEDING ARBITRATOR'S SIGNATURE


Robina Fedora Asti

Date of decision: October 2, 1998

I, **Robina Fedora Asti**, do hereby **affirm**, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Robina Fedora Asti