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Fraud costs millions for investors

Web posted Saturday, February 22, 2003

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By [Vicky Eckenrode](#)
Staff Writer

When Ronald Robinson recently took the \$111,000 that was left of his retirement fund to Solomon Smith Barney, his new stockbroker asked him unfamiliar questions.

"He actually had a sheet and went down it," said Mr. Robinson, a former Procter & Gamble worker. "Bill Gibbs never did that."

Mr. Gibbs is the subject of more than 60 pending arbitration cases claiming that the former branch manager for A.G. Edwards & Son's Augusta office broke several securities laws. Most of those deal with fraud and misrepresentation, costing clients millions that they had invested with him, according to the claims.

While these people are not the only ones who lost big in the disappointing stock market of recent years, they are somewhat different, said Edward Dovin, an Atlanta lawyer representing the majority of the claimants.

"These people didn't lose money because of the market," said Mr. Dovin, who has worked on securities cases for 15 years. "They lost money because of fraud."

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The securities industry is one of the most heavily regulated ones in the country. There are strict rules about what a stockbroker can say to a client or prospective client.

Stockbrokers must explain the risk of an investment to customers. They cannot make recommendations unsuitable to an individual's needs -- even at the request of the client, according to a Securities Exchange Commission opinion.

But despite the numerous rules on the books, arbitration cases involving brokerage firms are expected to be at a record high this year. In the late 1980s, it became legally acceptable to require customers opening a new brokerage account to waive their rights to a jury trial, leaving binding arbitration as the main vehicle for people to seek restitution if they think their broker has violated a security law.

"The industry would have you believe that's because the market went down," said Douglas Schulz, a securities fraud expert witness in Westcliffe, Colo. "All the bear market did was expose it."

Mr. Robinson, who worked for P&G for nearly 29 years, was one of the first local workers to sign up for Mr. Gibbs's Dow Theory investment strategy in 1996.

Six years later, he finally cashed out and left after years of losing money and control over his nest egg that started at \$738,000.

More than 40 people have filed complaints with the Georgia Secretary of State's Office about Mr. Gibbs, who stopped practicing last year and moved to North Carolina.

Contacting the state office or the National Association of Securities Dealers Inc. is an easy way to inquire about brokers' backgrounds and any complaints on file for them.

Educating yourself is one way to recognize a red flag and know whether to switch brokers, said Tryllis Hallford, director of consumer advocacy for the Secretary of State's Office.

"Before investing their money, we encourage Georgians to make an investment of their time to learn all that they can about the investment opportunity and the person offering it," she said.

Besides monitoring the frequency of trading and being wary of brokers who brag about the past performance, Mr. Schulz said investors have to remember the cliché that if it's too good to be true, it probably is.

In the beginning, Mr. Gibbs' strategy of investing in a handful of the highest yielding Dow Jones Industrial Average stocks was working, said Mr. Robinson, who's fund grew to \$1.3 million.

"Keep in mind the Dow strategies were established and broadly accepted investment approaches," said Margaret Welch, a spokeswoman at A.G. Edward's corporate office in St. Louis. "Depending on when they began pursuing this strategy, an investor using this strategy could have held any of the large stocks that comprise the Dow Jones Industrial Average."

Contacted earlier in the week, Mr. Gibbs referred all comment to the corporate office.

The strategy, which relied on a simple formula of choosing the top five or 10 stocks that fit that profile every year, had earned an average return rate of 20 percent since 1973 when Mr. Gibbs began the seminars.

But, Mr. Dovin said, the problem became apparent almost immediately when looking over some of the clients' early statements from A.G. Edwards.

One client's statement dated from 1997 showed he already was invested in Intel, a tech



Ronnie Robinson and his wife, Glenda, lost most of their retirement fund by investing with a broker who is now under investigation for fraud.

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stock that at the time was not even listed on the Dow Jones. In fact, only two of the client's five stock holdings were among the list of highest yielding stocks fitting the Dow strategy for that year.

"He kept handing out brochures until 1999 (about the theory)," Mr. Dovin said. "Well, he abandoned the Dow Theory in 1997."

Many of the people who worked with Mr. Gibbs and his assistant, Susan Saccone, at the firm fit a similar profile of blue-collar workers with little in savings who had never invested in the market before. But because they worked for well-established local companies, such as P&G or Lowe's, many had large pensions or retirement funds of near \$1 million.

The claimants say Mr. Gibbs convinced some to quit their jobs before retirement because he had a safe, surefire way to get them more money for living expenses than their paychecks while significantly growing their principal.

Meanwhile, because many of them had rolled over their IRAs into the investments, those who were under the age of 59 1/2 had to systematically withdraw a certain amount, often 9 percent, of their fund to avoid the IRS's penalty for early withdrawal.

What the clients didn't know, Mr. Dovin said, was that they would have to continue to withdraw that amount regularly until they turned 59 1/2 or for five years, whichever was longer, or face a 10 percent penalty -- even if their fund went broke.

"They did not know they were taking out principal," he said. "They were being told it was income."

"We have clients now that have lost all their money who have no Social Security, but they're going to owe the government tens of thousands of dollars."

When Mr. Gibbs began transferring nearly all his clients over to tech stocks in 1999 when the market took a small dip, people who were retirement age and had specifically marked growth conservative on their new account forms were suddenly in aggressive stocks all within the same sector.

Making unsuitable investments for a client is considered a violation.

And when Mr. Gibbs and Ms. Saccone allegedly made a massive stock trade for their remaining clients in March of 2000, they might have broken another rule about making unauthorized trades.

Securities laws state that a broker must discuss a trade in detail, explaining pros and cons of the stock, to a customer before the transaction is completed. Only if the customer signs a power of attorney form or agrees to set up a discretionary account do brokers have the ability to make changes on their own.

The majority of the more than 700,000 stockbrokers working in the country are honest, Mr. Schulz said. But if just 10 percent are unethical and have a couple hundred clients each, that could result in millions of dollars that are being mismanaged, he said.

"I think people need to interview at least three, maybe four people, and try to do a comparative analysis yourself," Mr. Schulz said. "If you've got a listener as opposed to a seller, you're probably talking to the right guy."



SCAMS AND FRAUD

These are some common types of securities claims:

- Investment Fraud: A broker must provide prospective investors with complete and balanced presentations that include the risk of the investment.
- Unsuitable Investments: A broker cannot make an investment recommendation unless it is appropriate for the client's needs, such as their financial situation and investment objective.







- Churning: A broker cannot engage in excessive trading just to make more money in commission.
- Unauthorized Trading: Unless a broker has a client's written permission, he or she cannot made trades without discussing it with the client first.

To check the background of a broker:

Call the Georgia Secretary of State's Office at (404) 656-3920 or visit The National Association of Securities Dealers Inc.'s online request form at <http://pdpj.nasdr.com/pdpj>.

Reach Vicky Eckenrode at (706) 823-3227 or vicky.eckenrode@augustachronicle.com.

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