

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Maurice F. and Barbara J. Moriarty

and

00-04927
Minneapolis, Minnesota

Name of Respondents

John G. Kinnard and Company, Inc.
James A. Crenna

REPRESENTATION OF PARTIES

Maurice F. and Barbara J. Moriarty ("**Claimants**") were represented by Michael Huberman, Michael Huberman and Associates, La Quinta, California.

John G. Kinnard and Company, Inc. ("**Respondent Kinnard**") and James A. Crenna ("**Respondent Crenna**") (collectively as "**Respondents**") were represented by F. Chet Taylor, Esq., Miller Johnson Steichen Kinnard, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about November 6, 2000. Submission Agreement of Claimants Maurice F. and Barbara J. Moriarty was undated.

Joint Statement of Answer was filed by Respondents John G. Kinnard and Company, Inc. and James A. Crenna on or about January 22, 2001. F. Chet Taylor signed Submission Agreement of Respondent John G. Kinnard and Company, Inc. on January 18, 2001.

CASE SUMMARY

Claimants alleged that they had very limited investment experience at the time they opened their account with Respondents. It was specifically alleged that Respondent Crenna, through a "newsletter" solicited Claimants to purchase Boston Chicken Incorporated Liquid Yield Option Notes. Claimants alleged that this investment was not suitable for them given their stated investment objectives. Claimants alleged that the actions of Respondents constituted breach of fiduciary duty; negligence; misrepresentations; breach of contract; and that Respondent Kinnard failed to supervise Respondent Crenna.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Maurice Moriarty is a successful and knowledgeable businessman who had a significant income and substantial net worth. It was also stated that Claimants understood investments, understood the risks, and enjoyed speculating in the market. Respondents stated that Respondent Crenna had fully explained the risks of the investment orally and in writing.

RELIEF REQUESTED

Claimants requested an award of:

- General and compensatory damages in an amount according to proof, but not less than \$15,000 against Respondents;
- The lost opportunity cost of what the \$11,000.00 invested would have earned if invested properly from the date of each purchase to the date of any arbitration award, in an amount according to proof;
- Costs of proceedings;
- Interest at the legal rate on all sums recovered;
- Attorneys fees and costs; and
- Such other and further relief as this Arbitration Panel deems just and appropriate.

By letter dated November 10, 2000, Mr. Huberman stated that the amount of damages being sought by the Claimants is \$19,000.00.

Respondents requested that the Arbitration Panel dismiss all claims asserted against them in this matter.

OTHER ISSUES CONSIDERED & DECIDED

Respondent James A. Crenna did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitrator on all issues submitted.

By letter dated June 1, 2001, the parties were advised of the Arbitration Panel's decision on the Motion to Dismiss as follows:

On May 23, 2001, the panel heard argument on respondent's motion to dismiss. Based on such argument and the memorandum of the parties, the panel, with all three members concurring, has concluded that the issues raised by respondent's motion are subject to factual issues which cannot be determined on the pleadings. Accordingly, the respondent's motion is denied.

Petitioner's motion to amend his statement of claim to add, at the end of paragraph 15 and 18, the phrase", or reasonable damages" is granted.

During the course of the hearing, Respondents asserted various Motions to Dismiss certain claims asserted in this matter. In addition, Respondents asserted a Motion to Dismiss the claims as being time barred by applicable statutes of limitations. After considering the arguments of the parties, the undersigned arbitrator took the motions under advisement.

The parties have agreed that a handwritten, signed Award may be entered. The parties have also agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are denied in their entirety, on the merits.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$125.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is John G. Kinnard and Company, Inc.

Member surcharge = \$ 400.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference(s): July 25, 2001 1 session

Four (4) Hearing sessions x \$450.00 = \$1,800.00
Hearing Date(s): August 20, 2001 2 sessions
August 21, 2001 2 sessions

Total Forum Fees = \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Maurice F. and Barbara J. Moriarty.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to John G. Kinnard and Company, Inc. and James A. Crenna.

Fee Summary

Claimants, Maurice F. and Barbara J. Moriarty, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,250.00
<u>Less payments</u>	= \$ 575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 675.00

Respondent, John G. Kinnard and Company, Inc., shall be and hereby is liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, John G. Kinnard and Company, Inc. and James A. Crenna, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Jeffrey W. Jacobs, Esq. - Public, Presiding Chair

Concurring Arbitrator:

/s/ Jeffrey W. Jacobs
Jeffrey W. Jacobs, Esq.
Public Arbitrator, Presiding Chair

September 4, 2001
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 00-04927
Award Page 5 of 5

Respondent, John G. Kinnard and Company, Inc., shall be and hereby is liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, John G. Kinnard and Company, Inc. and James A. Crenna, shall be and hereby are jointly and severally liable for:

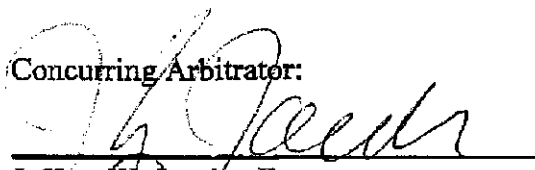
<u>Forum Fees</u>	= \$1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Jeffrey W. Jacobs, Esq. - Public, Presiding Chair

Concurring Arbitrator:


Jeffrey W. Jacobs, Esq.
Public Arbitrator, Presiding Chair

9-4-01
Signature Date