

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

MK & MK Corporation, (Claimant) vs. KSH Investment Group, Inc., Paul Dorfman, and Harvey Kohn, (Respondents)

Case Number: 00-05434

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, MK & MK Corporation, hereinafter referred to as "Claimant": Jenice L. Malecki, Esq., The Law Office of Jenice L. Malecki, New York, NY.

Respondents, KSH Investment Group, Inc. ("KSH"), Paul Dorfman ("Dorfman"), and Harvey Kohn ("Kohn"), hereinafter collectively referred to as "Respondents": Joel S. Forman, Esq., Bondy & Schloss LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 6, 2000.

Claimant signed the Uniform Submission Agreement: November 16, 2000.

Joint Statement of Answer filed by Respondents on or about: February 5, 2001.

KSH signed the Uniform Submission Agreement: February 5, 2001.

Dorfman signed the Uniform Submission Agreement: February 5, 2001.

Kohn signed the Uniform Submission Agreement: February 5, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: federal securities laws violations; misrepresentations; unauthorized trading; margin violations; market manipulation; control person liability; respondeat superior; omissions; failure to supervise; common law fraud; affinity fraud; churning; unsuitability; breach of fiduciary duty; negligence; and breach of contract. Claimant's claim involved a variety of stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents did not cause the market losses which Claimant incurred; Claimant's principal, Michael Khafizov

("Khafizov"), is an experienced investor and established businessman; Khafizov authorized every transaction in Claimant's account; Claimant will be unable to carry its burden of proof on any one of its multitude of claims; the investments made in Claimant's account were entirely suitable and consistent with Claimant's investment objectives; the losses in Claimant's account stemmed from legitimate market conditions and not from violations of securities laws; during the time that Claimant maintained its account at KSH, Claimant never once complained about any aspect of the account; Claimant's allegations fail to state a cognizable claim; Claimant's alleged losses resulted from its own trading strategy; Claimant's claims are untimely and barred by the doctrines of laches and equitable estoppel; Claimant failed to plead with particularity the alleged fraudulent misrepresentations; Claimant failed to mitigate its market losses; and Claimant's computation of its alleged market losses is in error.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$275,000.00;
- b. Attorneys' fees, costs, filing fees, and disbursements;
- c. Punitive damages; and
- d. Any other or further relief as the Panel deems appropriate.

Respondents requested that Claimant's claims be dismissed with prejudice and that Respondents be awarded the costs, including attorneys' fees, incurred in the defense of this arbitration.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$40,000.00 as compensatory damages, plus interest at the rate of 9% accruing from April 20, 2000 until date of payment.

2. Respondents be and hereby are jointly and severally liable for and shall pay directly to Jenice L. Malecki, Esq. the sum of \$10,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the following case law as argued in the Damage Analysis submitted by Claimant at the hearing in this matter: Synergy Gas Co. v. Sasso, 853 F.2d 59 (2nd Cir.).cert. denied, 488 U.S. 994 (1988); First Interregional Equity Corp. v. Haughton, 842 F.Supp. 105 (S.D.N.Y. 1994); U.S. Offshore, Ltd. v. Seabulk Offshore, Ltd., 753 F.Supp. 86 (S.D.N.Y. 1990); and Goldberger v. Integrated Resources, Inc., 209 F.3d 43,50 (2nd Cir.2000).
3. Claimant's request for punitive damages is hereby denied.
4. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, KSH Investment Group, Inc. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Oct. 10, 11, 12 & 15, 2001, adjournment by Claimant	= WAIVED
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Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: September 6, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference: May 2, 2001 1 session

Ten (10) Hearing sessions x \$1,125.00 = \$11,250.00
Hearing Dates: May 7, 2002 2 sessions
May 8, 2002 2 sessions
May 9, 2002 2 sessions
July 8, 2002 2 sessions
July 9, 2002 2 sessions

Total Forum Fees = \$12,825.00

1. The Panel has assessed \$4,275.00 of the forum fees against Claimant.
2. The Panel has assessed \$8,550.00 of the forum fees jointly and severally against Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$165.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$4,275.00
Administrative Costs	= \$ 165.00
Total Fees	= \$4,740.00

<u>Less payments</u>	= \$1,755.00
Balance Due NASD Dispute Resolution	= \$2,985.00

2. KSH be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,550.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

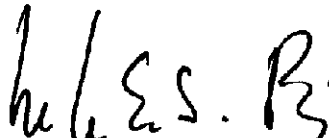
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ARBITRATION PANEL

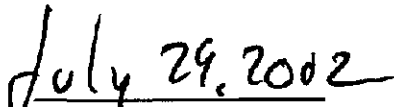
William E.S. Browning, Esq.	-	Public Arbitrator, Presiding Chair
Elliot R. Marvin, Esq.	-	Public Arbitrator
R. Keith Butterfield	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.



William E.S. Browning, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Elliot R. Marvin, Esq.
Public Arbitrator

Signature Date

R. Keith Butterfield
Non-Public Arbitrator

Signature Date

August 12, 2002
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

William E.S. Browning, Esq.	-	Public Arbitrator, Presiding Chair
Elliot R. Marvin, Esq.	-	Public Arbitrator
R. Keith Butterfield	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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William E.S. Browning, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Elliot R. Marvin, Esq.
Public Arbitrator

August 5, 2002

Signature Date

R. Keith Butterfield
Non-Public Arbitrator

Signature Date

August 12, 2002

Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

William E.S. Browning, Esq.	-	Public Arbitrator, Presiding Chair
Elliot R. Marvin, Esq.	-	Public Arbitrator
R. Keith Butterfield	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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William E.S. Browning, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Elliot R. Marvin, Esq.
Public Arbitrator

Signature Date


R. Keith Butterfield
Non-Public Arbitrator

8/3/02
Signature Date

August 12, 2002
Date of Service (For NASD Dispute Resolution use only)