

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Dr. Kenneth A. Barton, (Claimant) vs. Cohig & Associates, Inc. a/k/a Global Capital Securities Corporation, Lawrence Jack Vink, and Troy Melton Peters, (Respondents)

Case Number: 01-00484

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Dr. Kenneth A. Barton, hereinafter referred to as "Claimant": Richard D. DeVita, Esq., DeVita & Associates, Hoboken, NJ. Claimant originally appeared *pro se*.

Respondent, Cohig & Associates, Inc. a/k/a Global Capital Securities Corporation ("Cohig"), did not appear at the hearing in this matter. Previously represented by: Frank W. Visciano, Esq., Senn Lewis & Visciano, P.C., Denver, CO, and Russell K. Bean, Esq., General Counsel, Global Capital Securities Corporation, Englewood, CO, respectively.

Respondent, Lawrence Jack Vink ("Vink"), did not make an appearance in this matter.

Respondent, Troy Melton Peters ("Peters"), did not appear at the hearing in this matter. Mr. Peters originally appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: January 25, 2001.

Claimant signed the Uniform Submission Agreement: January 25, 2001.

Statement of Answer filed by Cohig on or about: May 2, 2001.

Cohig signed the Uniform Submission Agreement: May 24, 2001.

Vink did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Peters on or about: June 4, 2001.

Peters signed the Uniform Submission Agreement: July 11, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; fraud; breach of contract; conversion; misappropriation of funds; negligence; misrepresentations; failure to supervise; agency and respondent superior; and violation of NASD Rules of Fair Practice 3040. Claimant's claim involved investment funds allegedly secured by real estate.

Unless specifically admitted in its Answer, Cohig denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's damages, if any, are barred and/or offset by the contributory and/or comparative negligence or fault of Claimant, other Respondents, and/or non-parties; Claimant assumed the risk of incurring his alleged damages; Claimant's damages, if any, are the proximate result of the actions or inactions of third persons over whom Cohig exercised no control and had no right to control; Claimant's claims are barred, in whole or in part, by the applicable statutes of limitations and/or statute of frauds; Claimant's claims are barred by the doctrines of waiver, estoppel, and unclean hands; Claimant's claims are barred, in whole or in part, by reason of Claimant's own knowledge of and familiarity with the facts material to the representations, events, and transactions upon which Claimant's claims are based; Claimant has failed to mitigate his damages; Claimant's claims are barred, in whole or in part, by the doctrine of election of remedies; Claimant did not reasonably rely on any alleged representation or omissions by Cohig and instead relied on others, unrelated to Cohig and over whom Cohig had no control, with respect to the events and transactions upon which Claimant's claims are based; none of the alleged representations or omissions by Cohig were material; Cohig did not act recklessly, knowingly, or with intent to defraud Claimant; Claimant's claims are barred, in whole or in part, because he assumed the risk of incurring the damages which he alleges; and Claimant's claims are barred, in whole or in part, by the lack of proximate cause between Cohig's alleged conduct and Claimant's alleged damages.

Unless specifically admitted in his Answer, Peters denied the allegations made in the Statement of Claim and asserted the following defenses: Peters was not Vink's supervisor during the time in question; neither Cohig nor anyone else was responsible for supervising Vink's real estate ventures outside the branch office; and Peters had no knowledge of Claimant's real estate dealings with Vink.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested:

- a. Compensatory damages in the amount of \$57,000.00;
- b. Ten percent interest thereon in the amount of \$20,763.76;
- c. Treble punitive damages in the amount of \$233,291.28;
- d. Claimant's NASD filing fee and forum fee deposit in the total amount of \$1,425.00; and
- e. Any and all additional relief to which Claimant may be entitled in this matter.

In the damage analysis submitted as Exhibit 1 at the hearing, Claimant amended the punitive damage request to \$350,000.00, and added requests for attorneys' fees in the amount of \$27,399.02 and costs in the amount of \$1,000.00. Claimant also requested a restraining order enjoining Cohig from using funds on deposit with its clearing firms.

Cohig requested:

- a. That each of Claimant's claims be dismissed with prejudice;
- b. That Cohig be awarded all of its attorneys' fees and costs associated with the defense of Claimant's claims; and
- c. That Cohig be awarded such additional relief as the Panel deems to be appropriate.

Peters requested that he be dismissed from this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Vink has been properly served with the Statement of Claim and notice that arbitration of the matter would proceed without him present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Cohig and Peters have been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without them present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Vink did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Arbitrator Francis A. McGrail did not appear at the hearing in this matter. In accordance with Rule 10313 of the Code, the hearing proceeded with a Panel of two arbitrators since Claimant, the only appearing party, did not object to same.

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. Cohig, Vink, and Peters be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$57,000.00 as compensatory damages, plus pre-award interest totaling \$25,033.00, and post-award interest at the rate of 7% per annum accruing from the date of this Award until date of payment.
2. Vink be and hereby is solely liable for and shall pay to Claimant the sum of \$285,000.00 as punitive damages. The Panel awarded punitive damages pursuant to N.J.S.A. 2A: 15-5.12, 5.13, and 5.14, as argued in the damage analysis submitted as Claimant's Exhibit 1 at the hearing in this matter.
3. Cohig, Vink, and Peters be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$7,500.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to In re Estate of Lash, 169 N.J. 20, 26-27 (2001), as argued in the damage analysis submitted as Claimant's Exhibit 1 at the hearing in this matter.
4. Cohig, Vink, and Peters be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$900.00 as costs.
5. Cohig be and hereby is enjoined from using funds on deposit with its clearing firms including, but not limited to, Fiserv.
6. Cohig, Vink, and Peters be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
7. All other requests for relief are hereby denied.

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	= \$ 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, Cohig & Associates, Inc. a/k/a Global Capital Securities Corporation is a party.

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

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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: December 4, 2001	1 session
One (1) Hearing session x \$1,125.00	= \$1,125.00
Hearing Date: May 6, 2002	1 session
Total Forum Fees	= \$2,250.00

The Panel has assessed all of the forum fees jointly and severally against Cohig, Vink, and Peters.

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. Cohig, requested copies of Awards, \$70.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$1,125.00

As stated in the "Award" section above, Cohig, Vink, and Peters are jointly and severally liable and shall reimburse Claimant for the \$300.00 filing fee.

2. Cohig be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$ 70.00
Total Fees	= \$4,670.00
<u>Less payments</u>	= \$2,170.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,500.00

3. Cohig, Vink, and Peters be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

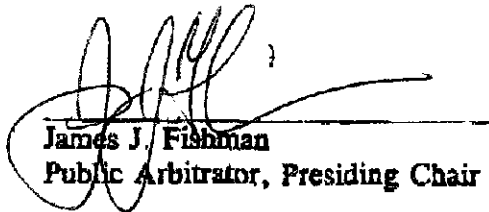
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James J. Fishman	-	Public Arbitrator, Presiding Chair
David N. Brainin, Esq.	-	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.



James J. Fishman
Public Arbitrator, Presiding Chair

14 June 2002
Signature Date

David N. Brainin, Esq.
Public Arbitrator

Signature Date

June 17, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL


James J. Fishman	-	Public Arbitrator, Presiding Chair
David N. Brainin, Esq.	-	Public Arbitrator

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James J. Fishman
Public Arbitrator, Presiding Chair

Signature Date



David N. Brainin, Esq.
Public Arbitrator

6/17/02

Signature Date

June 17, 2002

Date of Service (For NASD office use only)