

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gary W. Haynie, Claimant v. Scottrade, Inc., Thomas K. Henningsen and James K. No,
Respondents

Case Number: 02-04737

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Gary W. Haynie
Campbell, California

For Respondents:

Sherri C. Strand
Kimber L. Monroe
Thompson Coburn LLP
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: August 12, 2002

Claimant's Opposition to Motion to Dismiss filed: April 7, 2003 and June 17, 2003

Claimant's Uniform Submission Agreement signed: October 23, 2002

Statement of Answer and Motion to Dismiss filed by Respondents Scottrade, Inc. ("Scottrade")
and Thomas K. Henningsen: January 21, 2003

Respondents' Supplemental Memorandum in Support of their Motion to Dismiss filed: June 27,
2003

Respondent Scottrade's Uniform Submission Agreement signed: January 31, 2003

Respondent Thomas K. Henningsen's Uniform Submission Agreement signed: January 15, 2003

CASE SUMMARY

Claimant alleged that Respondents failed to follow his instructions regarding Claimant's investment in Mr. Roller Boogies, Inc. ("MRBO") stock and alleged that Respondent Henningsen stole shares of Claimant's Peoplesoft/Momentum Business stock ("MMTM").

Respondents asserted that Claimant's claims have already been decided against Claimant in a previous arbitration and moved for dismissal of Claimant's claims based on res judicata. Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted various defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$151,867.00 in connection with his investments in MRBO stock and requested damages in the amount of \$6,000.00 in connection with his investments in MMTM stock. Claimant also requested punitive damages totaling \$1,100,000.00.

Respondent requested dismissal of Claimant's claims, that Claimant take nothing, and an award in favor of Respondents for costs, fees and expenses incurred in defending this matter.

OTHER ISSUES CONSIDERED AND DECIDED

On December 6, 2002, Claimant signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 29, 2003, Respondents Scottrade and Thomas K. Henningsen's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 27, 2003, Respondent James K. No signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Claimant named a Bronson Henningsen as a party in this matter. On or about July 3, 2003, Claimant was advised that Bronson Henningsen was invited to participate in this matter on a voluntary basis since he is not an NASD member and was not an NASD member at the time of the dispute in this matter. Claimant was also advised that Bronson Henningsen was removed as a party as Bronson Henningsen did not voluntarily submit to NASD jurisdiction in this matter.

Respondent James K. No did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

On or about July 1, 2003, Respondents' counsel filed an Entry of Appearance on behalf of Respondent James K. No and advised that Respondent No joins in all of the pleadings submitted by Respondents Scottrade and Thomas K. Henningsen, including but not limited to Respondents' Answer and Motion to Dismiss.

The Panel has considered the positions of the parties relative to Claimant's request to submit an amended Statement of Claim made during the phone conference held August 28, 2003. The Panel denied Claimant's request.

The Panel 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 and arguments presented by the parties during the phone conference held August 28, 2003, in connection with Respondents' Motion to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents' Motion to Dismiss is granted. Accordingly, all claims by Claimant, including the claims for punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEEs

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Scottrade is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
Total Member Fees	= \$3,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: August 28, 2003 1 session

Total Forum Fees = \$1,200.00

The Panel assessed the \$1,200.00 in forum fees to Claimant.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,200.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 1,700.00
<u>Less Payments (filing fee waived by NASD-DR)</u>	= \$ (500.00)
Balance Due NASD-DR	= \$ 1,200.00

2. Respondent Scottrade is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,550.00
<u>Less Payments</u>	= \$(3,550.00)
Balance Due NASD-DR	= \$ 0.00

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

ARBITRATION PANEL

Kenneth W. Gosliner	-	Public Arbitrator, Presiding Chair
Peter Kassel	-	Public Arbitrator
John B. Weingart	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kenneth W. Gosliner
Chair, Public Arbitrator

Signature Date

Peter Kassel
Public Arbitrator

Signature Date

John B. Weingart
Non-Public Arbitrator

Signature Date

Date of Service

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Concurring Arbitrators' Signatures

Kenneth W. Gosliner

Kenneth W. Gosliner
Chair, Public Arbitrator

8-28-03

Signature Date

Peter Kassel
Public Arbitrator

Signature Date

John B. Weingart
Non-Public Arbitrator

Signature Date

9/4/03

Date of Service

ARBITRATION PANEL

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Peter Kassel	-	Public Arbitrator
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Chair, Public Arbitrator

Signature Date


Peter Kassel
Public Arbitrator

AUG 28/03
Signature Date

John B. Weingart
Non-Public Arbitrator

Signature Date

9/4/03
Date of Service

ARBITRATION PANEL

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Peter Kassel

John B. Weingart

- Public Arbitrator, Presiding Chair

- Public Arbitrator

- Non-Public Arbitrator

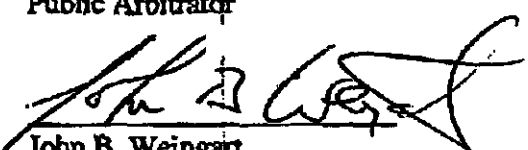
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Public Arbitrator

Signature Date


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Non-Public Arbitrator


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