

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Thomas Kober, Charles Cardona, and John Cardona (Claimants) vs. James Robert Kelly, Bryan Scott Zimmerman and Sunstate Equity Trading (Respondents)

Case Number: 04-00652

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Associated Persons and Member

REPRESENTATION OF PARTIES

Claimants Thomas Kober ("Kober"), Charles Cardona ("C. Cardona") and John Cardona ("J. Cardona") hereinafter collectively referred to as ("Claimants"): Robert Fitzpatrick, Esq., Trumbull, CT.

Respondents James Robert Kelly ("Kelly"), Bryan Scott Zimmerman ("Zimmerman"), and Sunstate Equity Trading ("Sunstate"), hereinafter collectively referred to as ("Respondents"): V. Stephen Cohen, Esq., Williams Schifino Mangione & Steady, P.A. Tampa, FL. Previously represented by Edwin B. Kagan, Esq., Tampa, FL.

CASE INFORMATION

Statement of Claim filed on or about: January 27, 2004.

Claimant Kober signed the Uniform Submission Agreement: January 30, 2004.

Claimant C. Cardona signed the Uniform Submission Agreement: January 29, 2004.

Claimant J. Cardona signed the Uniform Submission Agreement: January 29, 2004.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: May 24, 2004

Respondent Kelly signed the Uniform Submission Agreement: May 24, 2004

Respondent Zimmerman signed the Uniform Submission Agreement: May 24, 2004

Respondent Sunstate signed the Uniform Submission Agreement: May 24, 2004

CASE SUMMARY

Claimants asserted the following causes of action: theft of securities and breach of fiduciary duty. The causes of action relate to AdZone Research stock ("ADZR").

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, Respondents asserted the following causes of action: abuse of the NASD arbitration process.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$12,225,000.00 or alternatively 10,450,000 shares of ADZR stock, plus attorneys' fees not to exceed \$2,000,000.

Respondents requested dismissal of the Statement of Claim, expungement of CRD records, costs, expenses and forum fees, attorneys' fees and such other and further relief as the Panel deems just and proper.

In their Counterclaim, Respondents requested unspecified compensatory damages, costs, attorneys' fees, loss of income and reputation and such other further relief the Panel deems just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants did not appear on the first day of the hearing on November 8, 2005. Claimants' counsel appeared and resigned at the hearing on November 8, 2005. Then on or about November 23, 2005, Claimants' counsel notified NASD Dispute Resolution that he in fact would be representing Claimants.

On or about November 10, 2005, Respondents moved to dismiss Claimants' claim. Claimants' counsel, Mr. Fitzpatrick, filed a response in opposition to the motion, apparently having "unresigned" for that purpose. After reviewing Respondents' submission in support of their motion and Claimants' answer thereto, the Panel grants Respondents' Motion to Dismiss, with prejudice, because Claimants failed to proffer any evidence in support of their claim against Respondents, despite having been granted ample time to do so and orders Claimants to pay all costs of the hearing.

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.

PANEL'S DECISION

Claimants, two of whom were customers of Respondent Sunstate Equity Trading ("Sunstate"), alleged in their Statement of Claim that Alban Morrison ("Morrison"), a customer of Sunstate, told them that he could arrange for them to borrow money from Sunstate against their shares of AdZone Research common stock (the "ADZR Stock"). Morrison allegedly told Claimants that the funds he transferred to them constituted loans from Sunstate and that he was acting as escrow agent for Sunstate in holding Claimants' ADZR Stock as security for those loans. However, Claimants did not allege that they ever repaid those loans. It is undisputed that Morrison sold the ADZR Stock immediately after it was transferred into his account at Sunstate and that he withdrew the proceeds from his account prior to his death, which occurred prior to the filing of the Statement of Claim.

Respondents denied that they had any knowledge of the loans allegedly made by Morrison or that Morrison had any authority to act on their behalf. Respondents also denied that they had any

basis to suspect that the ADZR Stock that Claimants transferred to Morrison was restricted stock because the certificates did not contain any restrictive legend. Respondents claimed that their only involvement in the sale of the ADZR Stock was that they followed the instructions of Claimants in transferring the stock to Morrison's account and followed Morrison's instructions to sell the stock for Morrison's account. Since Morrison had died prior to the filing of the claim, he was not available as a witness for either party.

In order for claimants to prevail in this case, they must prove either (1) that Sunstate converted the ADZR Stock for its own use, or (2) that Sunstate either knew or should have known that Morrison had converted the ADZR Stock for his own use or (3) that Morrison was an agent or otherwise authorized by Sunstate to make loans to Claimants on behalf of Sunstate and act as escrow agent for Sunstate in holding the ADZR Stock as security for such loans.

Prior to the first scheduled hearing date on November 8, 2005, (1) Claimants made a Motion for Summary Judgment based on Respondents' alleged failure to supply Claimants with all the documents that Respondents requested, and (2) Respondents made a Motion for Summary Judgment against Claimants. Both parties were advised that their respective motions would be decided at the beginning of the hearing after they had an opportunity to be heard on their motions and that they should be prepared to begin presenting their case promptly after the motions were decided.

Although Respondents came to the hearing from Florida with their counsel and their witnesses, Claimants' counsel appeared at the hearing without his clients or any witnesses. At the outset of the hearing, the Panel asked Claimants' counsel why he needed the documents that he claimed he never received before he could put on Claimants' case. His answer was that they were needed to prove that Respondents did not comply with various regulatory requirements and their own internal guidelines regarding wire transfers, customer complaints, reporting requirements, etc.

The Panel denied Claimants' Motion for Summary Judgment because the documents sought by Claimants had no relevance to the issues in the case and because Respondents represented that they had delivered to Claimants all of the requested documents that they had in their possession or control. The Panel also denied Respondents Motion for Summary Judgment and advised Claimants' counsel that he should be prepared to put on his first witness (who the Panel was advised was in Long Island and thus could arrange to be present at the hearing after the lunch break). In the alternative, the Panel told Claimants' attorney that Claimants could have an adjournment of the hearing until the following morning to present their case and introduce evidence at the time in support of their claim, including the testimony of Claimants in support of their unsworn allegations as to what Morrison told them about the monies he loaned to them.

Claimants counsel, Robert Fitzpatrick, refused the offer of an adjournment. Instead he gave each arbitrator a copy of Respondents' witness list, which included Mr. Fitzpatrick's name as a possible witness for the Respondents. Mr. Fitzpatrick stated that because he was named as a witness, he had a conflict and must resign. He then hurriedly packed up his materials and started to leave. One arbitrator told him to wait and said if his being a potential witness for the Respondent is the reason he was resigning, the alleged conflict issue would be moot if Respondents agreed that they would not call him as a witness, which they did. Nevertheless, Mr. Fitzpatrick reiterated his claim that he had a conflict and quickly ran out of the room.

It was undisputed that Mr. Fitzpatrick had received Respondents' witness list 20 days prior to the hearing and that he did not raise his alleged conflict issue until the Panel denied Claimants' Motion for Summary Judgment. Thus, it is possible that Mr. Fitzpatrick knew that Claimants never had any intention of testifying at the hearing and was prepared in advance to use the spurious conflict claim and resignation for strategic purposes so as to put Respondents to the expense of having to make a second trip to New York from Florida, possibly as leverage to induce them to pay some money to settle.

On November 10, 2005, Respondents made a Motion to Dismiss Claimants' claim, and Mr. Fitzpatrick filed a response in opposition to that motion, apparently having "unresigned" for that purpose.

After reviewing Respondents' submissions in support of their motion and Claimants' answer thereto, the Panel hereby (1) grants Respondents' Motion to dismiss, with prejudice, because Claimants failed to proffer any evidence in support of their claim against Respondents, despite having been granted ample opportunity to do so, and (2) orders Claimants to pay all costs of the hearing.

AWARD

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

1. Claimants' claims are dismissed in their entirety with prejudice.
2. Any and all relief not specifically addressed herein is 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	= \$ 600.00
Counterclaim filing fee	= \$ 500.00

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. Accordingly, Sunstate Equity Trading is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 20, 21, & 22, 2005 adjournment by Claimants.	= \$ 1,200.00
The Panel assessed the adjournment equally among the parties.	

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 3,600.00
Pre-hearing conferences:	
July 8, 2004	1 session
April 20, 2005	1 session
April 21, 2005	1 session

Two (2) Hearing sessions @ \$1,200.00	= \$ 2,400.00
Hearing Date:	November 8, 2005 2 sessions

Total Forum Fees	= \$ 6,000.00
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1. The Panel has assessed \$6,000.00 of the forum fees to Claimants.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,600.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

2. Claimant Kober is solely liable for:

Adjournment Fee	= \$ 200.00
Total Fees	= \$ 200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 200.00

3. Claimant C. Cardona is solely liable for:

Adjournment Fee	= \$ 200.00
Total Fees	= \$ 200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 200.00

4. Claimant J. Cardona is solely liable for:

Adjournment Fee	= \$ 200.00
Total Fees	= \$ 200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 200.00

5. Respondent Sunstate is solely liable for:

Member Fees	= \$ 10,000.00
Adjournment Fee	= \$ 200.00

Total Fees	= \$ 10,200.00
<u>Less payments</u>	= \$ 11,000.00
Refund Due Sunstate	= \$ 800.00

6. Respondent Kelly is solely liable for:

<u>Adjournment Fee</u>	= \$ 200.00
Total Fees	= \$ 200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 200.00

7. Respondent Zimmerman is solely liable for:

<u>Adjournment Fee</u>	= \$ 200.00
Total Fees	= \$ 200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 200.00

8. Respondents are jointly and severally liable for:

<u>Counterclaim filing fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Biagio A. Civile	-	Public Arbitrator, Presiding Chairperson
Stephen A. Hochman, Esq.	-	Public Arbitrator
Jeffrey P. Bachmann	-	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.

Biagio Civile

Biagio A. Civile
Public Arbitrator, Presiding Chairperson

February 3, 2006

Signature Date

Stephen A. Hochman, Esq.
Public Arbitrator

Signature Date

Jeffrey P. Bachmann
Non-Public Arbitrator

Signature Date

February 7, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Biagio A. Civalo	-	Public Arbitrator, Presiding Chairperson
Stephen A. Hochman, Esq.	-	Public Arbitrator
Jeffrey P. Bachmann	-	Non-Public Arbitrator

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Biagio A. Civalo
Public Arbitrator, Presiding Chairperson

Signature Date



Stephen A. Hochman, Esq.
Public Arbitrator

2/2/2006

Signature Date

Jeffrey P. Bachmann
Non-Public Arbitrator

Signature Date

February 7, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Biagio A. Civale	-	Public Arbitrator, Presiding Chairperson
Stephen A. Hochman, Esq.	-	Public Arbitrator
Jeffrey P. Bachmann	-	Non-Public Arbitrator

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Biagio A. Civale
Public Arbitrator, Presiding Chairperson

Signature Date

Stephen A. Hochman, Esq.
Public Arbitrator

Signature Date



Jeffrey P. Bachmann
Non-Public Arbitrator

2/6/06

Signature Date

February 7, 2006

Date of Service (For NASD Dispute Resolution use only)