

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

James Klingenstein and R. James Klingenstein P/ADM PSP FBO (Claimants) v.
Cardinal Capital Management, Inc., BNY Clearing Services, LLC, Hershel Smith, and
John D. Kaweske, and Christopher A. Sweeney (Respondents)

Case Number: 04-08672

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customers vs. Terminated Members and Associated Persons.

REPRESENTATION OF PARTIES

Claimants James Klingenstein ("J. Klingenstein") and R. James Klingenstein P/ADM PSP FBO ("R. Klingenstein") hereinafter referred to as "Claimants" appeared *pro se*.

Respondent Cardinal Capital Management, Inc. ("Cardinal") did not enter an appearance in the matter.

Respondent BNY Clearing Services, LLC ("BNY Clearing"): Jesse H. Lawrence, III, Esq., Pershing LLC, Jersey City, NJ.

Respondent Hershel Smith ("Hershel") appeared *pro se*. Previously represented by Delmer C. Gowing, III, Esq., Delmer C. Gowing, III, Esq., Attorney and Counselor at Law, Ocean Ridge, FL.

Respondent John D. Kaweske ("Kaweske") appeared *pro se*. Previously represented by Stephen A. Mendelsohn, Esq., Greenberg Trauring, P.A., Boca Raton, FL.

Respondent Christopher A. Sweeney ("Sweeney") appeared *pro se*.

CASE INFORMATION

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

Amended Statement of Claim filed on or about January 27, 2005.

J. Klingenstein signed the Uniform Submission Agreement: December 21, 2004.

R. Klingenstein signed the Uniform Submission Agreement: December 21, 2004.

Cardinal did not submit an Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by BNY Clearing on or about: April 8, 2005.

BNY Clearing signed the Uniform Submission Agreement: April 7, 2005.

Statement of Answer and Motion to Dismiss filed by Hershel on or about: March 9, 2005.

Hershel signed the Uniform Submission Agreement: February 24, 2005.

Statement of Answer filed by Kaweske on or about: March 17, 2005.

Respondent Kaweske did not sign the Uniform Submission Agreement.

Sweeney did not submit an Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized transactions, respondeat superior, negligent supervision, control person liability, negligent hiring, unsuitable trades, churning, fraud, breach of fiduciary duty, breach of contract, violation of securities statutes and regulations and violation of MASS. Gen. Laws. Ch. 93A s.2. The causes of action relate to the purchase of Biophan Tec, Inc. stock and other unspecified securities.

Unless specifically admitted in its Answer, BNY Clearing denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Hershel denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Kaweske denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$71,422.13, punitive damages in the amount of \$30,000.00, treble damages in the amount of 142,844.26, attorneys' fees, costs and such other relief that the panel deems just and equitable.

BNY requested that the Panel dismiss the Statement of Claim in its entirety and an Award for its costs and expenses incurred, together with such other and further relief as is just, proper and equitable.

Hershel requested that the Statement of Claim be dismissed with costs against Claimant and that the panel recommend expungement of the Statement of Claim from his Central Registration Records ("CRD").

Kaweske requested that the Panel dismiss the Statement of Claim in its entirety and an Award for attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

In their Amended Statement of Claim, Claimants added Christopher A. Sweeney as a Respondent. Because Sweeney was not provided with notice of the hearings scheduled for this matter, the undersigned arbitrators (the "Panel") determined to dismiss, without prejudice, the claims against Respondent Sweeney.

Respondents Kaweske and Cardinal Capital Management did not participate at the hearings scheduled for this matter.

Upon review of the file and the representations made by Claimants, the Panel determined that Respondents Cardinal and Kaweske 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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

The parties 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 Kaweske and Cardinal are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$71,422.13.
2. Any and all relief not specifically addressed herein, including punitive and treble damages, 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 = \$ 300.00

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. In this matter, BNY Clearing Services, LLC is a party.

Member Surcharge = \$1,700.00
Pre-Hearing Process Fee = \$ 750.00
Hearing Process Fee = \$2,750.00

Adjournment Fees

The following adjournment fees are assessed:

January 17-19, 2006 adjournment requested by Claimants and Respondents = Waived
July 19-20, 2006 adjournment requested by Hershel = Waived
October 25-26, 2006 adjournment requested by Hershel = Waived

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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences: June 16, 2005 1 session
October 3, 2005 1 session

One (1) Hearing session @ \$1,125.00/session = \$1,125.00

Hearing: December 11, 2006 1 session

Total Forum Fees = \$3,375.00

1. The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Respondents Cardinal and Kaweske.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund due Claimants	= \$1,125.00

2. Respondent BNY Clearing is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Cardinal and Kaweske are jointly and severally liable for:

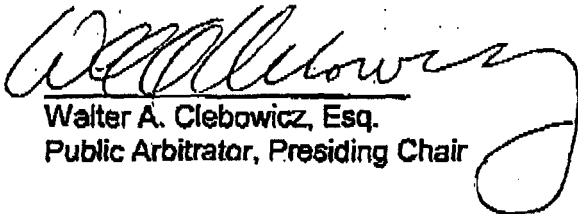
Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$3,375.00

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

ARBITRATION PANEL

Walter A. Clebowicz, Esq.	-	Public Arbitrator, Presiding Chair
Gerard S. Marsan, Esq.	-	Public Arbitrator
Darman A. Wing	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Walter A. Clebowicz, Esq.
Public Arbitrator, Presiding Chair

12/15/06
Signature Date

Gerard S. Marsan, Esq.
Public Arbitrator

Signature Date

Darman A. Wing
Non-Public Arbitrator

Signature Date

December 22, 2006

Date of Service (For NASD office use only)

ARBITRATION PANEL

Walter A. Clebowicz, Esq.	-	Public Arbitrator, Presiding Chair
Gerard S. Marsan, Esq.	-	Public Arbitrator
Darman A. Wing	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Walter A. Clebowicz, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Gerard S. Marsan, Esq.
Public Arbitrator



Signature Date

Darman A. Wing
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Walter A. Clebowicz, Esq.	-	Public Arbitrator, Presiding Chair
Gerard S. Marsan, Esq.	-	Public Arbitrator
Darman A. Wing	-	Non-Public Arbitrator

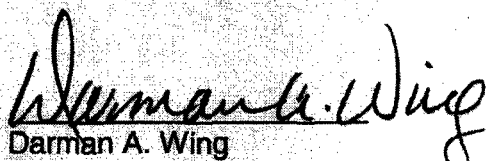
Concurring Arbitrators' Signatures

Walter A. Clebowicz, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Gerard S. Marsan, Esq.
Public Arbitrator

Signature Date


Darman A. Wing
Non-Public Arbitrator

December 19, 2006
Signature Date

December 22, 2006

Date of Service (For NASD office use only)