

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

EUGENE A. DEPPERSCHMIDT d/b/a KENTENTEX
ENERGY GROUP

Claimant(s)

and

STEVE JOHNSON; ARTHUR J. PORCARI;
MICHAEL FEARNOW; AND, PORCARI-FEARNOW &
ASSOCIATES, INC.

Respondent(s)

CASE NO. 87-02536

CASE SUMMARY

In a Statement of Claim filed with the NASD on December 9, 1987, Claimant Eugene A. Depperschmidt (d/b/a) Kententex Energy Group alleged that Respondents engaged in fraud by interfering in sales to artificially prop up CMS & IBS stock prices; failed to execute orders that were verbally confirmed; mishandled the accounts during the closing of Respondent Porcari-Fearnow & Associates, Inc.; and participated in inside trades of CMS warrants to control price.

In a Statement of Answer filed with the NASD on January 31, 1989, Respondents Arthur J. Porcari, Michael Fearnow and Porcari-Fearnow & Associates, Inc. denied the allegations of the Statement of Claim and affirmatively stated that Porcari-Fearnow & Associates, Inc. did not artificially prop up the CMS stock or engage in any insider trading.

In a Statement of Answer filed with the NASD on March 1, 1989, Respondent Steve Johnson denied allegations that he confirmed certain sales of securities and quoted debit balance to Claimant reflecting these trades. In addition, Respondent Johnson stated that he was unable to execute claimants sell order of 1200 shares of CMS stock at the 7 1/8 limit order due to the market collapse of October, 1987.

RELIEF REQUESTED

Claimant requested in the Statement of Claim that an award be entered against Respondents in the amount of \$12,375.00 for the unexecuted order and for \$33,825.00 for the fraud and mishandling of the stocks.

Respondents requested that the Statement of Claim be dismissed in its entirety and for such further relief as they may be entitled.

PROCEDURAL MATTERS

Prior to opening statements, Claimant presented a motion pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure to bar Respondents from presenting any matter, arguments, or defenses at the hearing. After hearing oral argument on the motion, the panel denied the motion.

AWARD

On June 22, 1990, in Houston, Texas in a hearing lasting for 2 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 4, 1987 by Claimant Eugene A. Depperschmidt d/b/a Kententex Energy Group and on June 22, 1990 by Respondent Stephen N. Johnson. Respondents Arthur J. Porcari, Michael Fearnow and Porcari-Fearnow & Associates, Inc. were requested to file a submission agreement at hearing, but failed to do. However, Respondents Porcari, Fearnow, and Porcari-Fearnow and Associates, Inc. filed an answer in this matter, were represented by counsel at the hearing, Respondent Fearnow was present at the hearing and gave testimony and Respondents are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Steve Johnson, Arthur J. Porcari, Michael Fearnow and Porcari-Fearnow and Associates, Inc. are jointly and severally liable and shall pay to Claimant Eugene A. Depperschmidt d/b/a Kententex Energy Group the sum of \$4,950.00;
2. The parties shall each bear their own respective costs, including attorneys' fees;

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Eugene A. Depperschmidt, d/b/a Kententex Energy Group. Respondents Arthur J. Porcari, Michael Fearnow, Porcari-Fearnow and Associates, Inc. and Steve Johnson shall be jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$800.00.

By the Panel


Dated: _____ /S/

Arthur O. Dyess, Jr. Esq.
Presiding Chair

Dated: _____ /S/

Leonard S. Alpert

Dated: 7/30/90 /S/


Morris Rubin

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Eugene A. Depperschmidt, d/b/a Kententex Energy Group. Respondents Arthur J. Porcari, Michael Fearnow, Porcari-Fearnow and Associates, Inc. and Steve Johnson shall be jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$800.00.

By the Panel

Dated: _____ /S/

Arthur D. Dyess, Jr. Esq.
Presiding Chair

Dated: October 2, 1990 /S/

Leonard S. Alpert
Leonard S. Alpert

Dated: _____ /S/

Morris Rubin

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Eugene A. Depperschmidt, d/b/a Kententex Energy Group. Respondents Arthur J. Porcari, Michael Fearnow, Porcari-Fearnow and Associates, Inc. and Steve Johnson shall be jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$800.00.

By the Panel

Dated: August 16, 1990 /S/

Arthur D. Dyess, Jr.
Arthur D. Dyess, Jr. Esq.
Presiding Chair

Dated: _____ /S/

Leonard S. Alpert

Dated: _____ /S/

Morris Rubin