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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Michael A. Kellogg

Claimant

vs.

Gliksman Securities Corp. and
Harry Gliksman

Respondent(s)

AWARD

CASE NO. 88-00992

CASE SUMMARY

Claimant alleged that on October 26, 1987, Respondents sold 67,500 shares of Nortek, Inc. common stock, without Claimant's approval and over his expressed objections, and without other authority. Claimant alleged that he received no maintenance calls from Respondents, and that if he had, he would have been able to meet such calls.

Respondents alleged that the liquidation of 72,500 shares on October 26, 1987 was necessary due to margin maintenance requirements and to avoid a debit balance in excess of \$200,000.00. Respondents alleged that Claimant is a knowledgeable and sophisticated investor, that Claimant signed a Customer Margin Agreement allowing for liquidation in the event his account should fail to meet the then in effect margin maintenance requirements, that Claimant had full knowledge of house requirements and was advised in advance of the liquidation of the margin requirements. Respondents alleged that after liquidation of the Nortek shares, there remained due, owing and unpaid to Gliksman the sum of \$26,596.00.

In reply to Respondents' Counterclaim, Claimant denies that any amount is due to Gliksman Securities Corp., and alleges that the initial debit balance of \$22,893 in Claimant's account was created when Harry Gliksman panicked and damaged Claimant as set forth in Claimant's Statement of Claim, and alleges that Gliksman's February 29, 1988 letter to Wedbush Securities attached to Gliksman's Statement of Answer claims that responsibility for the "debit balance" lies with Wedbush, not Claimant.

RELIEF REQUESTED

Claimant requests restitution of \$134,189.65, to be applied as follows: 1) \$26,796.81 to be applied to Claimant's deficit account with Gliksman Securities Corp.; 2) \$74,826.36 in cash; 3) \$32,334.88 in attorneys' fees; and 4) \$231.60 in costs. Respondents request \$26,796.00, including accrued interest, plus attorneys' fees in the amount of \$7,000.00

DAMAGES AND RELIEF AWARDED

The claim in this matter was filed on March 29, 1988. On June 13 and 14, 1989; the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 23, 1988 and by Respondents on June 2, 1988. The hearings were held in Los Angeles, California and there were four hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents/Counterclaimants are liable for and shall pay to Claimant/Counterrespondent the sum of Forty Thousand Eight Hundred Dollars and Zero Cents (\$40,800.00), calculated as follows:

- a. Respondents/Counterclaimants are liable for and shall pay to Claimant/Counterrespondent the sum of Fifty-Two Thousand Four Hundred Dollars and Zero Cents (\$52,400.00), inclusive of interest;
- b. Pursuant to the Correspondent Broker Customer Margin Agreement dated April 23, 1987 and California Civil Code Section 1717(a), Respondents/Counterclaimants are liable for and shall pay to Claimant/Counterrespondent attorneys' fees in the sum of Fifteen Thousand Dollars and Zero Cents (\$15,000.00);
- c. On Respondent/Counterclaimants' Counterclaim, Claimant/Counterrespondent is liable for and shall pay to Respondent the sum of Twenty-Six Thousand Six Hundred Dollars and Zero Cents (\$26,600.00), which will offset the amounts due to Claimant/Counterrespondent in subparagraphs b and c above.

Said liability of Respondents/Counterclaimants is joint and several.

2. The parties shall each bear their respective costs.

3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant. Respondents/Counterclaimants shall reimburse Claimant/Counterrespondent \$750.00. Further, pursuant to Section 43, Respondents/Counterclaimants are assessed forum fees in the amount of \$2,250.00, to be paid directly to the

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(National Association of Securities Dealers, Inc.. Said liability of Respondents/Counterclaimants is joint and several.

PRESIDING ARBITRATORS

DATE SERVED: 08/11/89

Edward Swanson
Edward Swanson

Irving Porush

William Richardson

National Association of Securities Dealers, Inc.. Said liability of Respondents/Counterclaimants is joint and several.

DATE SERVED: 08/11/89

Edward Swanson


Irving Porush

William Richardson