

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John T. Kartesz

90-00257

Name of Respondent(s)

Kennedy, Cabot & Company
David Paul Kane
Don Wascher

Heard Before:

Name

Public/Industry

Francis O. Spalding_____

Public_____

John J. Flynn_____

Public_____

Anne Hennegar_____

Industry_____

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 23, 1990.

Claimant alleged that Kennedy, Cabot and Company violated its fiduciary duties and obligations under the federal securities laws, engaged in fraudulent and deceptive practices with respect to the transfer of Claimant's securities from Dean Witter to Kennedy Cabot and Company, wilfully withheld information from the Claimant and negligently handled Claimant's securities. Claimant further alleged that Kennedy, Cabot intentionally and knowingly misstated the facts with respect to Claimant's securities, and treated claimant and his property with ultimate disregard and disdain.

Kennedy, Cabot and Company alleged that it was not in a position to correct a problem it did not know existed, that when made aware of the problem, Kennedy, Cabot acted immediately to correct it and that there is no basis for awarding punitive damages.

Kennedy Cabot and Company asserted a third-party claim against Don Wascher, alleging that he negligently caused the original error concerning Claimant's account and then wilfully failed to notify Kennedy, Cabot of its existence, and later abandoned his office and Kennedy, Cabot's clients after having removed all customer account files and records, thus eliminating any opportunity for Kennedy, Cabot to find the error on its own. Kennedy Cabot further alleged that Wascher acted in total disregard of accepted rules of fair practice regarding the handling of Claimant's account.

RELIEF REQUESTED

Claimant sought in his Statement of Claim:

1. reimbursement of all funds lost due to his inability to sell or otherwise dispose of his securities,
2. interest at 10% per annum from the date of the deposit of the securities with Kennedy, Cabot to the date of the award,
3. a refund or waiver, as appropriate, of all margin interest charged Claimant for the period of time that he was deprived of access to his securities,
4. punitive damages, and
5. attorneys' fees and all costs including filing and forum fees.

Kennedy, Cabot prayed that if any award is rendered, that it be severally against Don Wascher.

AWARD

On March 12 and 13, 1991 in San Francisco, California, during a hearing lasting four sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 7, 1989. Claimant was represented at the hearing by Martin Mandel, Esq. Respondents Kennedy, Cabot and Company and David Paul Kane were represented at the hearing by George Kupper, Esq.

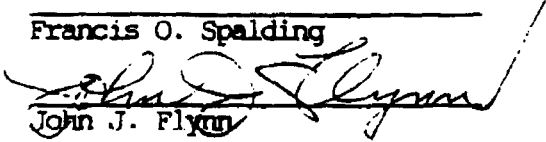
After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Kennedy, Cabot and Company is liable for and shall pay to Claimant the sum of Forty-Five Thousand Dollars Exactly (\$45,000.00).
2. Each and every claim against Respondent David Paul Kane is dismissed.
3. Cross-Respondent Don Wascher did not received adequate notice of the hearing and therefore each and every claim against him is dismissed without prejudice.
4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section <43c> of the Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. Respondent Kennedy Cabot and Company is liable for reimbursing Claimant said \$750.00 filing fee. In addition, Kennedy, Cabot and Company is also assessed fees of \$1,250.00 for forum fees, to be paid directly to the National Association of Securities Dealers, Inc.

Concurring Arbitrator(s) Signature

Francis O. Spalding


John J. Flynn

Anne Hennegar

Date of Decision: 3-27-91

DATE SERVED: 3/28/91