

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John B. Greenfield, Philip Greenfield
and the Greenfield Family Trust
Lee Collins
Michael Herrera
Christina Menicucci-Lane
John Matt Elliott and Neal Barry Elliott

vs.

90-02085

90-02407

90-02411

~~90-02528~~

91-02369

Name of Respondent(s)

Kober Financial Corporation
Michael S. Hughes
Robert A. Lopez

CONSOLIDATED CASES

REPRESENTATION

For Claimants: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, California

For Respondent Kober Financial Corporation: Dennis A. Graham, Esq., Hopper And Kanouff, Denver Colorado

For Respondent Michael S. Hughes: Michael S. Hughes, Salt Lake City, Utah

CASE INFORMATION 90-02085

Statement of Claim filed by John B. Greenfield, Philip Greenfield and the Greenfield Family Trust: July 27, 1990

Claimants' Response to the Counterclaim of Michael S. Hughes filed: August 6, 1992

Claimants' Response to Michael S. Hughes' First Defense and Second Defense filed: August 6, 1992

Amended Statement of Claim filed on behalf of Claimants John B. Greenfield, Philip Greenfield, the Greenfield Family Trust, Lee Collins, Michael Herrera, Christina Menicucci-Lane, John Matt Elliott and Neal Barry Elliott: October 13, 1992

H Thomas Fehn's correspondence of October 20, 1992 relative to Claimants' Amended Statement of Claim filed: October 22, 1992

H Thomas Fehn's correspondence of November 10, 1992 relative to Claimants' Amended Statement of Claim filed: November 12, 1992
John B. Greenfield's, Philip Greenfield's and the Greenfield Family Trust's Submission Agreement signed on: November 8, 1989

Statement of Answer and Crossclaim filed by Respondent Kober Financial Corporation: October 2, 1990

Amended Answer filed by Respondent Kober Financial Corporation: August 8, 1991

Second Amended Answer filed by Respondent Kober Financial Corporation: August 13, 1991

Kober Financial Corporation's Counterclaims, Cross-Claims and Third-Party Claim filed: October 16, 1992

Answer of Respondent Kober Financial Corporation to Claimants John B. Greenfield, Philip Greenfield and the Greenfield Family Trust's Statements of Claim filed: October 16, 1992

Answer of Respondent Kober Financial Corporation to Claimants Lee Collins, Michael Herrera and Christina Menicucci-Lane's Statements of Claim filed: October 16, 1992

Kober Financial Corporation's Answer to Claimants' Amended Statement of Claim filed: November 13, 1992

Kober Financial Corporation's Submission Agreement signed on: October 1, 1990

Statement of Answer and Counterclaim filed by Respondent Michael S. Hughes: July 16, 1992

Respondent Michael S. Hughes did not submit a Submission Agreement. However, he appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

CASE INFORMATION 90-02407

Statement of Claim filed by Lee Collins: August 30, 1990

Lee Collins' Submission Agreement signed on: February 6, 1990

Statement of Answer and Cross-Claim filed by Respondent Kober Financial Corporation: November 21, 1990

Kober Financial Corporation's Submission Agreement signed on: November 19, 1990

Statement of Answer and Counterclaim filed by Respondent Michael S. Hughes: July 16, 1992

CASE INFORMATION 90-02411

Statement of Claim filed by Michael Herrera, D.D.S.: August 30, 1990

Submission Agreement by Michael Herrera, D.D.S. signed on: February 6, 1990

Statement of Answer and Cross-Claim filed by Respondent Kober Financial Corporation: November 21, 1990

Kober Financial Corporation's Submission Agreement signed on: November 19, 1990

Statement of Answer and Counterclaim filed by Respondent Michael S. Hughes:
July 16, 1992

CASE INFORMATION 90-02529

Statement of Claim filed by Christina Menicucci-Lane: September 11, 1990
Christina Menicucci-Lane's Submission Agreement signed on: February 21, 1990

Statement of Answer and Cross-Claim filed by Respondent Kober Financial Corporation: November 21, 1990
Kober Financial Corporation's Submission Agreement signed on: November 19, 1990

Statement of Answer and Counterclaim filed by Respondent Michael S. Hughes:
July 16, 1992

CASE INFORMATION 91-02369

Statement of Claim filed by John Matt Elliott and Neal Barry Elliott: August 1, 1991
John Matt Elliott's and Neal Barry Elliott's Submission Agreements signed as follows:

John Matt Elliott: July 19, 1991

Neal Barry Elliott: July 19, 1991 and October 28, 1991

Statement of Answer and Cross-Claim filed by Kober Financial Corporation: September 6, 1991

Amended Statement of Answer and Cross-Claim filed by Kober Financial Corporation: September 11, 1991

Statement of Answer, Cross-Claim and Third-Party Claim filed by Respondent Kober Financial Corporation with respect to John Matt Elliott's Statement of Claim filed: December 2, 1991

Kober Financial Corporation's Submission Agreement signed on: September 10, 1991

Statement of Answer and Counterclaim filed by Respondent Michael S. Hughes:
July 16, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: September 24, 1992 (one session)
November 30, 1992 (one session)

Hearing Dates/Sessions: April 19, 1993 (two sessions)
April 20, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged conversion, misrepresentations and breach of fiduciary duty with respect to a merger of Tri-Star Capital Corporation, a public company, with Axxess/Micra-Tech. Claimants alleged that the merger was not consummated

for reasons unknown to Claimants. Claimants further alleged that after demand having been made, neither Kober Financial Corporation (Kober) nor Michael S. Hughes (Hughes) returned either the securities or money invested. Claimants alleged that in doing the aforesaid actions and willfully depriving Claimants of their property based upon the misrepresentations concerning the merger, Respondents breached their fiduciary duty and acted in reckless and wanton disregard of Claimants' rights.

In its Answer to Claimants' Amended Statement of Claim, Kober alleged that throughout the course of the events which gave rise to the Statement of Claim, the Claimants were not customers of Kober. Kober further alleged that any loss suffered by the Claimants was due to the actions of Hughes, and that Kober is not responsible for the actions of Hughes because Hughes was acting outside the scope of his employment and Kober could not have known of the activities of Hughes in the exercise of reasonable diligence. Kober also asserted affirmative defenses.

In its first counterclaim for relief against Claimants, Kober alleged that the suit against Kober by Claimants is an attempt to recoup losses caused by Claimants' own negligence or malfeasance by shifting the responsibility to Kober.

In its second counterclaim for relief against Claimants, Kober alleged that Lee Collins, Michael Herrera, Philip Greenfield and the Greenfield Family Trust were induced to deliver their Tri-Star stock to Employee Leasing and Bruce Nelson by the representations of Messrs. Elliott and Greenfield and Christina Manicucci-Lane. Kober alleged that at all times, Kober followed the instructions of Messrs. Elliott and Greenfield and Ms. Manicucci-Lane concerning the transfer of stock and funds to Bruce Nelson. Kober asserted that to the extent that Kober is found liable to Lee Collins, Michael Herrera, Philip Greenfield or the Greenfield Family Trust, it is entitled to indemnification and/or contribution from Messrs. Elliott and Greenfield and Ms. Manicucci-Lane.

In its cross-claim against Hughes, Kober alleged that to the extent that Claimants' claims in the Statement of Claim are true, Hughes committed the wrongful acts. Kober further alleged that at all times, Hughes was acting outside the scope and authority of his position with Kober. Kober asserted that to the extent that Kober may be found liable for the actions of Hughes, Kober is entitled to contribution and/or indemnification from Hughes.

Respondent Hughes alleged that Claimants' claims should be dismissed for lack of jurisdiction under the provisions of Section 12 of the Code of Arbitration Procedure. In addition, Hughes denied Claimants' allegations of wrongdoing and alleged that in all of his dealings with Claimants Hughes acted in good faith and with full and absolute honesty, disclosing all facts relevant to the transaction. Hughes further alleged that in dealing with the securities owned by Claimants he acted with the knowledge and consent of Claimants in all cases, and in all cases conducted himself consistent with Claimants' instructions.

In his counterclaim, Hughes alleged that in an effort to divert attention from their wrongful acts, Claimants filed claims against Hughes which they knew to contain untrue statements and have made allegations and given testimony which they knew was false and misleading.

RELIEF REQUESTED

Claimant requested:

1. The return of money and the reasonable value of the property wrongfully obtained and retained;
2. Consequential damages according to proof;
3. Punitive damages as the panel may deem appropriate; and
4. Costs and reasonable attorneys' fees.

Kober requested that Claimants' Amended Statement of Claim be denied.

Regarding Kober's first counterclaim for relief, Kober requested damages be awarded to it and against Claimants in an amount to be determined at arbitration, the costs and attorney's fees incurred in defending this action and prosecuting this counterclaim, and for such other and further relief as the panel may deem just.

Regarding Kober's second counterclaim for relief, Kober requested judgment against Messrs. Elliott and Greenfield and Ms. Manicucci-Lane in an amount to be determined at arbitration, together with costs and attorney's fees incurred in prosecuting this counterclaim, and for such other and further relief as the panel may deem just.

Regarding Kober's cross-claim against Hughes, Kober requested judgment in its favor and against Hughes on the cross-claim of Kober, for costs and attorney's fees incurred, and for such other and further relief as the panel may deem just.

Hughes requested that Claimants' claims be dismissed with prejudice. Regarding his counterclaim, Hughes requested judgment be granted jointly and severally against Claimants for damages in an amount, not less than \$100,000.00, to be proved at the arbitration hearing.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, the panel of arbitrators reviewed and considered the written positions of the parties relative to Kober Financial Corporation's Motion to Dismiss John Matt Elliott's Complaint. The arbitrators denied the Motion. The arbitrators also reviewed and considered the written positions of the parties relative to 1) Claimants' Motion In Limine Requests and Motion to Exclude Testimony with respect to Respondent Michael S. Hughes; and 2) Respondents' Motion for a change of Venue. The arbitrators denied the Motions.

In addition, the arbitrators reviewed and considered the written and oral arguments by the parties' representatives relative to Kober's position that an irreconcilable conflict of interest exists from the representation of all Claimants by H Thomas Fehn, Esq. Kober maintained that the above-captioned matter was heard by a panel of arbitrators in December, 1991 and January, 1992, and that after hearing the evidence presented, as well as arguments of counsel, the arbitration panel adjourned the case because Michael Murphy, Esq. counsel for the Claimants, was found to have an irreconcilable conflict of interest, and therefore could not represent the Claimants before the panel. Initially, the arbitrators ruled to hear arguments on this issue at the evidentiary hearing. Pursuant to Kober's request that the panel reconsider this issue, the Chairperson, on behalf of the panel heard further arguments by the parties' representatives during a telephonic conference on September 24, 1992, and determined that each Claimant shall retain separate counsel for the arbitration of this case. This ruling was upheld by the entire panel after hearing arguments by the parties' representatives during a telephonic conference held November 30, 1992. Prior to the evidentiary hearing, Claimants submitted a request that the arbitrators reconsider their ruling requiring Claimants to retain separate counsel in this matter. Upon reconsideration of the memorandum to the parties and their attorneys of record dated January 15, 1992, confirming the voluntary dismissal without prejudice of the subject action, the panel concluded that Claimants were not compelled by the prior panel to obtain separate counsel and that H Thomas Fehn, Esq. could represent Claimants at the evidentiary hearing of the above-captioned matter. The panel issued this ruling without prejudice to the parties submitting additional arguments on this issue at the hearing. No further arguments were submitted.

Kober Financial Corporation asserted Third-Party Claims against Bruce Nelson, Bonnie King and Employee Leasing. Since Mr. Nelson, Ms. King and Employee Leasing are not NASD members and did not voluntarily submit to NASD jurisdiction, they were administratively removed as parties in this proceeding.

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators determined that Respondent Robert A. Lopez was not properly served with due notice of the hearing and is therefore dismissed from the Claim, without prejudice.

2. The arbitrators found in favor of all Claimants against Kober Financial Corporation for breach of fiduciary duty and found in favor of all Claimants against Michael S. Hughes for misrepresentation. The arbitrators have determined that Respondents Kober Financial Corporation and Michael S. Hughes are jointly

and severally liable for and shall pay to each Claimant the sum of One Dollar And No Cents (\$1.00).

3. Claimants' claims for punitive damages are denied.

4. All claims by Kober Financial Corporation against Claimants are dismissed.

5. All claims by Kober Financial Corporation against Michael S. Hughes are dismissed.

6. All claims by Michael S. Hughes against Claimants are dismissed.

7. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: Forum fees are to be split between the parties and are calculated as follows:

Two pre-hearing sessions	@ \$300.00/session	=	\$ 600.00
Four hearing sessions	@ \$750.00/session	=	\$3,000.00
Total fees assessed		=	\$3,600.00
Claimants' share (one-third)		=	\$1,200.00
Credit for hearing deposits totalling \$2,550.00		=	\$2,550.00
Refund amount		=	\$1,350.00
Kober Financial Corporation's share (one-third)		=	\$1,200.00
Credit for hearing deposits totalling \$2,500.00		=	\$2,500.00
Refund amount		=	\$1,300.00
Michael S. Hughes' share (one-third)		=	\$1,200.00
Balance due		=	\$1,200.00

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name

Public/Industry

Norman R. Cohen, Esq.
Robert S. Clarke
Michael W. Burnett, PhD

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures


Norman R. Cohen, Esq.

Robert S. Clarke

Michael W. Burnett, PhD

Date of Decision: _____

Date Served: 06/02/93