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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Howard Leung and Shirley Leung
Benita Leung
Fay Hom and
Brian Hom

91-01913

Names of Respondents

G K Scott & Co. Inc.
Wakefield Financial Corporation
Kelly Trading Co., nka Minella, Rich Co.
Alexander Minella
Keith Minella
John Kevorkian
George Kevorkian
Parsons Eng
Tiffany, Ltd.
et al

REPRESENTATION

For Claimants, Howard and Shirley Leung; Benita Leung; Fay Hom; and, Brian Hom: Robert Wayne Pearce, Esq. of Lerner and Pearce.

For Respondents, G. K. Scott & Co., Inc. ("GKS"), George Kevorkian ("G. Kevorkian") and John Kevorkian ("J. Kevorkian"): George Kevorkian.

For Respondent Morton Kantrowitz ("Kantrowitz"): pro se.

For Respondent Keith Minella ("K. Minella") and Kelly Trading Co. nka Minella, Rich Co. ("Kelly Trading"): Kieth Minella.

For Respondent Wakefield Financial Corporation ("Wakefield"): Frank J. Casillo.

For Respondent Alexander Minella ("A. Minella"): pro se.

For Respondent Parsons Eng (" Eng"): pro se.

For Tiffany, Ltd.: Unknown.

CASE INFORMATION

Statement of Claim filed: June 20, 1991. Claimants' Submission Agreements signed on: June 5, 1991 by Howard Leung; June 4, 1991 by Shirley Leung; June 3, 1991 by Benita Leung; and June 3, 1991 by Fay Hom and Brian Hom.

Respondents, K. Minella and Kelly Trading's, Statement of Answer filed: August 19, 1991. Their Submission Agreement signed: August 14, 1991 by Minella. K. Minella appeared at the hearing via telephone on his own behalf only.

Respondent, Donato Delvecchio's ("Delvecchio"), Statement of Answer filed February 22, 1993. No Submission Agreement signed but see Other Issues.

Respondent Kenneth E. Stoops', ("Stoops") Statement of Answer filed: August 6, 1991. Submission Agreement signed: August 2, 1991.

Respondent, Keith Friedman's, Statement of Answer filed: March 10, 1992. Friedman refused to sign a Submission Agreement, but see Other Issues.

Respondent, Joseph Elkind's, Statement of Answer filed: March 11, 1992. Submission Agreement signed: February 28, 1992.

Respondents, GKS, G. Kevorkian and J. Kevorkian's, Amended Statement of Answer filed: November 13, 1992. Submission Agreements signed on November 11, 1992 by both Kevorkians and by G. Kevorkian on behalf of GKS.

Respondent, Eng's, Statement of Answer filed: June 18, 1993. Eng, failed to execute a Submission Agreement or to appear at the hearing. (See Other Issues.)

Respondents, Wakefield, A. Minella and Tiffany, failed to file Answers or execute Submission Agreements as required by Sections 12 and 25 of the Code and failed to appear at the hearing. (See Other Issues).

HEARING INFORMATION

On June 21 and 22, 1993, in Fort Lauderdale, Florida hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimants alleged that Eng, as an agent of Wakefield, solicited Claimants to open accounts with him as their broker at Wakefield; that Eng misrepresented to Claimants that he was recommending and executing transactions which were without risk in a covered option writing strategy when, in fact, he was speculating in index and equity options; that Eng was executing unsuitable trades for Claimants in equities in Tiffany, which was a shell corporation controlled by Eng; that Eng also made other unsuitable and unauthorized trades in options and equities for Claimants' accounts; that all Respondents participated in a conspiracy to manipulate the NASDAQ market and thereby defraud investors, including Claimants; that by participating in the conspiracy, the Respondents violated State and Federal anti-racketeering and civil theft statutes, as well as common law fraud and state securities statutes including Section 517.301, 07 and 211, Florida Statutes and Chapter 49:3-71(2) New Jersey Securities Act; that Wakefield, its officers and Eng committed common law fraud, breached their fiduciary duty to Claimants; and, were negligent in handling Claimants' accounts.

All Respondents who filed Answers denied all allegations of wrongdoing.

Respondent, Elkind, alleged that he never spoke to or did business with Claimants and was never employed by or registered with Wakefield. Elkind alleged the affirmative defenses of failure to state a cause of action; failure to allege fraud with particularity; and, the damages with respect to Respondent Elkind are vague, speculative and remote.

Elkind filed a crossclaim and alleged that Respondents, Wakefield and Eng, are liable to Elkind for contribution and indemnification for liability arising from Claimants' claim.

Respondents, GKS, G. Kevorkian and J. Kevorkian alleged that they never conducted business with Claimants, nor at any time did Claimants maintain an account at GKS.

Respondent, Eng, alleged that all complained-of trades were authorized by Edwin Leung Hom, brother of Howard Leung and custodian of Brian Hom; that both Claimant, Howard Leung, and Edwin were principals of Tiffany; and, that this case is the result of a vendetta by Edwin and Howard Leung.

Respondents, K. Minella and Kelly Trading, alleged that they never transacted business with or even heard of any of the Claimants; that Claimants have attempted to bootstrap a claim against a single broker into claims against 17 persons; and, that Claimants' allegations merely track the New York indictment.

Respondents, Minella and Kelly Trading, alleged the affirmative defenses of failure to state a cause of action; New York law should govern; statute of limitations; lack of specificity; no punitive damages under New York law; facts do not support imposition of punitive damages; and, laches.

Respondent, Donato Delvecchio, alleged that he did not know or do business with Claimants.

Respondent, Stoops, alleged that he did not know or do business with Claimants.

Respondent, Friedman, alleged that he has no knowledge of the business dealings of any of the Respondents; that he has been locked out of the Wakefield office; and, that he maintains his innocence in the criminal matters.

RELIEF REQUESTED

Claimants requested damages as follows:

Howard and Shirley Leung: compensatory damages in excess of \$135,504.00, prejudgment interest at 12%, treble damages in excess of \$122,394.00, punitive damages in excess of \$409,512.00, attorney's fees and costs.

Benita Leung: compensatory damages in excess of \$27,311.50; prejudgment interest at 12%; treble damages in excess of \$32,962.50; punitive damages in excess of \$81,934.50, attorneys fees and costs.

Fay Hom: compensatory damages in excess of \$16,674.00; prejudgment interest at 12%; treble damages in excess of \$34,329.00; punitive damages in excess of \$50,022.00; attorney's fees and costs.

Brian Hom: compensatory damages in excess of \$20,321.00; prejudgment interest at 12%; treble damages in excess of \$47,463.00; punitive damages in excess of \$60,963.00; attorney's fees and costs.

Respondents, GKS, G. Kevorkian, J. Kevorkian, Kelly Trading, K. Minella, Delvecchio, Elkind, Friedman, Stoops and Eng requested dismissal. Elkind also requested an award granting his crossclaim for indemnification and/or contribution, costs and attorneys' fees. GKS and the Kevorkians also requested costs. Kelly Trading and K. Minella also requested costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimants filed a Notice of Voluntary Dismissal Without Prejudice with respect to Respondents, Joseph Zaborowski("Zaborowski"), Elkind, Theresa Crescenzi("Crescenzi"), Kantrowitz, Delvecchio, Jack Maffai("Maffai") and Stoops. Respondents, Zaborowski, Elkind, Crescenzi, Delvecchio, Maffai and Stoops, did not appear at the hearing. Mr. Kantrowitz appeared and was excused by the Panel.
2. The Claimants and Friedman filed a Stipulation of Dismissal of Friedman with prejudice.
3. The Panel finds it has no jurisdiction over Respondent Tiffany, Ltd., because it is not a member firm and did not voluntarily submit to arbitration.
4. Respondents, Eng, Wakefield and A. Minella, failed to execute Submission Agreements or to appear and defend at the hearing, and A. Minella further failed to file an Answer. From the record evidence contained in the NASD file in this matter, the Panel finds adequate service upon and notice to these Respondents. The Panel finds it has jurisdiction over these Respondents: Wakefield, as a member firm, and the individuals, both of whom were associated with a member firm. Pursuant to Section 29 of the Code the Panel proceeded with the hearing of this matter and enters this award as if these Respondents had appeared.
5. Subsequent to the commencement of the hearing, the Panel heard argument on a Motion to Dismiss and Motion for Reimbursement of Costs on behalf of GKS and the Kevorkians. The Panel denied both motions.
6. The remaining 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, these 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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondents, GKS, G. Kevorkian, J. Kevorkian, K. Minella and Kelly Trading, are found not liable and, therefore, all claims against them are hereby dismissed.

(2) Respondents, Wakefield, Eng and A. Minella are found liable, jointly and severally, for common law fraud and violation of Sections 517.301 and 211, Florida Statutes, and shall pay to the Claimants the total amount of \$187,227.00, inclusive of interest at the legal rate, in the amounts to each Claimant as follows:

to Howard and Shirley Leung: \$144,267.00;
to Benita Leung-Noto: \$23,720.00;
to Brian Hom: \$14,800.00; and
to Fay Hom: \$4,400.00.

(3) Respondent, Eng, is also found liable and shall pay to the Claimant, Howard Leung, the further amount of \$80,250.00, inclusive of interest at the legal rate, for violation of Section 517.07 and 211, Florida Statutes.

(4) Respondents, Wakefield, Eng and A. Minella, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$20,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. The Panel bases its authority for the award of attorney's fees on the Federal Arbitration Act and the case law construing that Act.

(5) Claimants' requests for punitive damages and treble damages are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

(1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (3 sessions x \$1,000.00).

(2) Respondents, Wakefield, Eng and A. Minella, are hereby assessed \$3,000.00, jointly and severally, \$1,000.00 of which shall be paid directly to the Claimants, and \$2,000.00 of which shall be paid to the National Association of Securities Dealers, Inc.

(3) The NASD shall retain the session deposit of \$1,000.00 paid by the Claimants.

(4) The NASD shall retain the non-refundable filing fees of \$250.00 paid by the Claimants.

(5) Respondents shall reimburse the Claimants \$250.00 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
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<u> /s/ </u> Myron Dunay, Esq.	
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<u> /s/ </u> Thomas E. Swenson	Public
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<u> /s/ </u> Nicholas A. Natale	Industry
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Date of Decision: 8/23/93