



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Sydney Kobler

91-02065

Name of Respondents

Brian McCarty  
Bailey, Martin and Appel

REPRESENTATION

For Claimant: Anthony J. Hom, Esq.

For Respondent Brian McCarty: Brian McCarty represented himself.

For Respondent Bailey, Martin and Appel: John Stoffere

CASE INFORMATION

Statement of Claim filed: July 1, 1991.

Amended Statement of Claim filed: July 22, 1991.

Claimant Sydney Kobler's ("Claimant") Submission Agreements signed on: June 27, 1991 and July 22, 1991.

Statement of Answer filed by Respondent Brian McCarty ("McCarty") on: August 22, 1991.

Respondent McCarty's Submission Agreement signed on: August 20, 1991.

Respondent Bailey, Martin & Appel, Inc. ("Bailey Martin") filed a Motion to Dismiss, and in the alternative, designated McCarty's Statement of Answer to represent its own. This document was filed in letter form by Bailey Martin on: September 18, 1991.

Respondent Bailey Martin did not execute a submission agreement; however, Bailey Martin was represented at the hearing. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the Presiding Arbitrator exercised his jurisdiction over Respondent Bailey Martin.

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#### HEARING INFORMATION

Pre-Hearing Conference: February 20, 1992

Hearing Date/Session: February 21, 1992 - one session

Hearing Location: NASD Office - Philadelphia, PA

#### CASE SUMMARY

Claimant alleged that Respondents placed the Claimant in unsuitable investments. Claimant alleged that McCarty induced Claimant to purchase Stansbury Mining Corp. ("Stansbury") by claiming that he had inside information and that the stock was going to dramatically increase in price. Claimant maintained that McCarty never told Claimant that Stansbury was a speculative investment nor did McCarty ever provide Claimant with information regarding it. Claimant alleged that he relied on McCarty for investment advice and that McCarty mislead him. Claimant alleged that McCarty breached his fiduciary duty to Claimant in that, among other things, McCarty made false statements to induce Claimant to purchase Stansbury, that McCarty failed to disclose the risks and that McCarty failed to inform the Claimant of a sell recommendation released for Stansbury.

McCarty maintained that the investment of Stansbury was suitable for the Claimant and that he disclosed all the pertinent information regarding Stansbury to the Claimant. McCarty maintained that Claimant knew Stansbury was a speculative investment but that the Claimant was interested in investing. McCarty maintained that he recommended Stansbury to the Claimant and suggested that Stansbury would increase in value because it was an under value security, however, McCarty maintained he never guaranteed the performance of Stansbury. McCarty maintained that the trading in Stansbury was not manipulated. McCarty maintained he properly handled Claimant's account at all times.

Bailey Martin maintained that it had limited involvement with the Claimant and that the Claimant's account had been transferred when McCarty switched firms and became a registered representative with Bailey Martin. Bailey Martin maintained that all the account documents for Claimant's account were in proper order and that Stansbury was suitable for the Claimant. Bailey Martin maintained that any rule violations that it may have violated had nothing to do with Stansbury. Bailey Martin maintained that McCarty properly handled Claimant's account and that it properly supervised McCarty and Claimant's account. Bailey Martin maintained that it was monitoring Stansbury and that it was on Bailey Martin's recommended list.

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RELIEF REQUESTED

Claimant requested: Compensatory damages in the amount of \$22,000 plus interest, costs and punitive damages.

Respondents requested: that Claimant's claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

That pursuant to respective positions taken by the parties during the pre-hearing conference on February 20, 1992, the Presiding Arbitrator decided to grant Respondent CENPAC Securities Corp.'s motion to dismiss it as a party to these proceedings.

AWARD

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

1. That Claimant's claims are denied in their entirety.
2. That the parties shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, Claimant is assessed forum fees. The cost of the pre hearing conference is \$300 and the cost of the single hearing session conducted in this matter is \$300 so that Claimant is assessed as forum fees in the amount of \$600. Claimant is, however, entitled to offset this amount with his hearing session deposit of \$400, so that the amount due from the Claimant as forum fees is \$200.

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

Arbitrator's Signature

Name

Richard B. Laden  
Richard B. Laden

Public/Industry

Public Arbitrator

Date of Decision: 12 March 1992

NASD Date of Decision: March 19th, 1992