

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

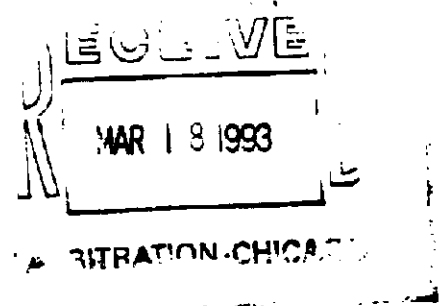
Name of Claimants

Hugh H. and Phyllis S. Arnold

and

Name of Respondents

Kober Financial Corp., James Hosch  
Richard Rouse and Charles Pankey



91-03880

REPRESENTATION OF PARTIES

Claimant was represented by Noel Guardi, Esq., Denver, Colorado.

Respondents Kober Financial Corp., James Hosch and Richard Rouse were represented by Dennis A. Graham, Esq. of Hopper and Kanouff, Denver, Colorado.

Respondent Charles Pankey was represented by Arthur Underwood, Esq., Aurora, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about December 9, 1991. Submission Agreement of Claimants Hugh H. and Phyllis S. Arnold was signed on November 25, 1991.

Statement of Answer was filed by Respondents Kober Financial Corp., James Hosch and Richard Rouse on or about January 28, 1992. Submission Agreement of Respondent Kober Financial Corp. was signed on January 27, 1992 by Richard Rouse. Submission Agreement of Respondent Richard Rouse was signed on January 27, 1992. Submission Agreement of Respondent James Hosch was signed on January 27, 1992.

Statement of Answer was filed by Respondent Charles Pankey on or about February 14, 1992. Submission Agreement of Respondent Charles Pankey was signed on February 11, 1992.

HEARING INFORMATION

A pre-hearing conference was held on August 19, 1992 for one (1) session. The hearing was

held on Friday, October 9, 1992 for two (2) sessions, Monday, February 15, 1993 for two (2) sessions, Tuesday, February 16, 1993 for two (2) sessions and Wednesday, February 17, 1993 for two (2) sessions in Denver, Colorado for a total of nine (9) sessions.

### CASE SUMMARY

Claimants alleged that Respondent Charles Pankey ("Pankey") made false statements to induce them to open their account at Kober Financial Corp. Claimants specifically alleged that Pankey told them that he was an excellent broker, that he would manage the account in accordance with their objectives and that he would make appropriate recommendations. Claimants specifically alleged that Pankey induced them to purchase shares of Tradux Corp. by stating that if they cooperated and purchased these shares, Pankey would repurchase them for \$2.00 per shares in a few days. Claimants further alleged that Pankey induced them to purchase shares of Chaparral Mining Corporation by stating that a merger was imminent. Claimants alleged that Respondents Kober Financial Corp., James Hosch and Richard Rouse failed to supervise Pankey and that the actions alleged herein constituted violations of federal and state securities laws, breach of fiduciary duty and that punitive damages were appropriate.

Respondents Kober Financial Corp., James Hosch and Richard Rouse denied the allegations stated against them and stated that the Claimant Hugh H. Arnold was an extremely sophisticated investor whose investment objectives included long term growth and speculation, and high degree of risk and/or activity. Respondents Kober Financial Corp., James Hosch and Richard Rouse further stated that Claimant Hugh H. Arnold clearly understood the fact there is no such thing as a risk free or guaranteed securities transaction. Respondents Kober Financial Corp., James Hosch and Richard Rouse asserted various affirmative defenses including but not limited to: failure to mitigate, waiver, estoppel, ratification, laches, Pankey was not acting within the course and scope of his agency, employment or authority and that the claims were barred by the applicable statutes of limitation.

Respondent Pankey denied the allegations against him and adopted the answer filed by Respondents Kober Financial Corp., James Hosch and Richard Rouse. Pankey also asserted affirmative defenses including but not limited to: failure to mitigate, waiver, estoppel, ratification, laches, Pankey was not acting within the course and scope of his agency, employment or authority and that the claims were barred by the applicable statutes of limitation.

### RELIEF REQUESTED

Claimants requested and award of damages in an amount to be determined at the hearing, together with interest, costs, including attorney's fees and exemplary damages.

Respondents Kober Financial Corp., James Hosch and Richard Rouse requested that the claims

asserted against them be denied and that they be awarded their costs, expenses and reasonable attorney's fees.

Respondent Pankey requested that the claims asserted against them be denied and that they be awarded their costs, expenses and reasonable attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the conclusion of the hearing of this matter, Claimants and Respondents Kober Financial Corp., James Hosch and Richard Rouse advised the N.A.S.D. and the undersigned arbitrator that they had reached a settlement of all claims between them for the sum of \$5,000.00.

### **AWARD**

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

1. Respondent Charles Pankey shall be and hereby is liable for and shall pay to the Claimants Hugh H. and Phyllis S. Arnold the sum of \$1,350.00 (one thousand three hundred fifty dollars). No damages are awarded for the Chaparral Mining Corporation trade.
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of March 23, 1990 to and inclusive of the date this award is paid in full.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimants. Claimants shall pay to the N.A.S.D. the sum of \$1,400.00 as forum fees.

Forum fees are calculated at the rate of \$300.00 per hearing session and \$300.00 for each prehearing conference, if any.

N.A.S.D. Arbitration No. 91-03880

Award

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The NASD shall retain as forum fees, the postponement fee deposit in the amount of \$300.00 previously deposited with the NASD by Respondent Pankey. In addition, Respondent Charles Pankey shall pay to the N.A.S.D. the sum of \$700.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Thaddeus J. Tecza, Ph.D.  
Thaddeus J. Tecza, PhD.  
Public Arbitrator, Presiding Chair

3/15/93

N.A.S.D. DISCIPLINARY REFERRAL

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Hugh H. and Phyllis S. Arnold

and

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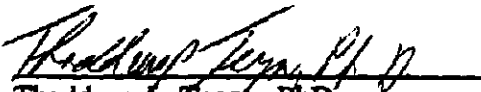
Name of Respondents

Kober Financial Corp., James Hosch  
Richard Rouse and Charles Pankey

DISCIPLINARY REFERRAL

During the course of the hearing in the above captioned arbitration certain evidence and testimony came to the attention of the undersigned arbitrator which he feels should be investigated by the appropriate District Business Conduct Committee. Specifically, the undersigned arbitrator is concerned with the guarantee made by Respondent Charles Pankey that he would repurchase the shares of Tradux Corp at a price of \$2.00 per share.

Dated:

  
Thaddeus J. Tecza, PhD.  
Public Arbitrator, Presiding Chair

