

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 BetweenName of Claimants

Kamal Alfaqih and Effat Younis

91-03883

Name of Respondents

Ali Kolaghassi
J. Patrick Driver
J. W. Gant & Associates, Inc.

REPRESENTATION

For Claimants: Kamal Al-Faqih and Effat Unis appeared pro se

For Respondents: Gordon D. Dihle, Esq. of Dihle & Co., P.C. J. Patrick Driver did not attend the hearing, and counsel for Respondents did not attend the hearing. Ali Kolaghassi did attend the hearing and the representative at the hearing for J.W. Gant & Associates, Inc., was Mr. Albert Poliak.

CASE INFORMATION

Statement of Claim filed: December 9, 1991.

Claimants' Submission Agreements signed on: December 4, 1991.

Statement of Answer filed by Respondent Ali Kolaghassi on: January 29, 1992.

Motion to Dismiss as to Respondent J. Patrick Driver and Statement of Response of Respondent J. Patrick Driver filed on: January 29, 1992.

Respondent Ali Kolaghassi's Submission Agreement signed on January 23, 1992 and Respondent J. Patrick Driver's Submission Agreement signed on January 28, 1992.

Respondent J.W. Gant & Associates, Inc., did not sign a submission agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: June 16, 1992, 1 session.

Hearing Location: NASD offices located in Washington, D.C.

CASE SUMMARY

Claimant Kamal Al-Faqih alleged that in December, 1990, he opened an account with J.W. Gant & Associates, Inc. ("Gant") as a result of Respondent Ali H. Kolaghassi's solicitations, and that Claimant Al-Faqih informed Respondent Kolaghassi that he was not in a position to risk his modest savings and that with the proceeds of the sale of stock that was in his account plus an additional investment of \$2,025.00, and upon Respondent Kolaghassi's recommendation, Claimant Al-Faqih purchased 2,000 shares of Celebrity Resorts, Inc. ("Celebrity") at a value of \$5,115.00. Claimant Al-Faqih further alleged that several weeks after the initial purchase of Celebrity, Respondent Kolaghassi assured him that the shares of Celebrity would split and result in an increase in value, and urged him to invest more money, which resulted in an additional investment of \$2,750.00. Claimant Al-Faqih further maintained that the shares did in fact split, and that in June, 1991, without Claimant Al-Faqih's authorization, Respondent Kolaghassi sold all 6,000 shares of Celebrity for a slight profit and invested the proceeds in Mega Group, Inc. ("Mega"), in an amount greater than the proceeds from the sale and informed Claimant Al-Faqih that he should send in an additional sum approximately \$1,500. Claimant Al-Faqih further alleged that he refused, indicating that he wanted the purchase of Mega cancelled and the proceeds from the sale of Celebrity sent to him, and that Respondent Kolaghassi said he could not do that, and also insisted that Mega was very solid and stable and that the price would not fluctuate, but still cancelled part of the purchase resulting in no additional investment and a \$390.00 check to Claimant Al-Faqih for the sale of Celebrity. Claimant further alleged that after Mega's price declined, he called Respondent Kolaghassi and protested that the decline in price did not follow his assurance of stability, and that Respondent Kolaghassi then changed from a confident, assuring and boastful broker and said that he does not guarantee market conditions, and even suggested that Claimant Al-Faqih invest more money in Mega to take advantage of the its price so as to profit more when the price would surely increase. Claimant alleged that he protested such a suggestion. Claimant Al-Faqih further alleged that upon Respondent Kolaghassi's assurance that Celebrity was going to split, he and his aunt, Claimant Effat Unis, invested \$2,750.00 in a joint account and thereafter, the transactions that occurred in that account were identical to those that occurred in his own account.

Respondent Kolaghassi maintained that Claimant Al-Faqih, in opening his new account with Gant, stated that his investment objectives were "Growth with Risk" and "Speculation-High Degree of Risk and/or High Activity," and that

Claimant had previous investment experience. Said Respondent further maintained that pursuant to Claimant Al-Faqih's instructions, he purchased 2,000 shares of Celebrity for a total price of \$5,115.00. Respondent Kolaghassi further alleged that after he informed Claimant Al-Faqih that a stock split was pending for Celebrity, such Claimant ordered an additional 1,000 shares for his account, and also opened a new joint account for himself and his aunt, Claimant Effat Younis, in which he purchased 1,000 shares of Celebrity. The New Account Information Form for the joint account indicates investment objectives identical to that of Claimant Al-Faqih's own account. Respondent Kolaghassi further maintained that the Celebrity stock did split, and was subsequently sold in both Claimants' accounts, and that pursuant to the prior authorization of Claimant Al-Faqih, Respondent Kolaghassi placed an order for 8,000 shares of Mega for Claimant Al-Faqih, and that due to a clerical error, the original ticket was for two orders of 5,000 shares, as soon as said error was noted that day, one 5,000-share order was cancelled, and a 3,000-share order was written for a total order of 8,000 shares for Claimant Al-Faqih's account and 3,000 shares of Mega were purchased for Claimants' joint account. Respondent Kolaghassi further maintained that all transactions were authorized by Claimants and suitable in accordance with the investment objectives stated in the New Account Information agreements executed by Claimants, that the transactions were ratified by Claimants, and that Claimants had previous investment experience and were fully aware of the risks inherent in the stocks they were purchasing.

Respondent J. Patrick Driver asserted a motion to dismiss, stating that he had never spoken with either of the Claimants nor had any contact with the Claimants. Mr. Driver also stated he is not the owner of J.W. Gant & Associates, Inc., and did not supervise Respondent Ali Kolaghassi. In the event the request for dismissal is not granted Mr. Driver incorporated by reference the statement of facts, refutation of Claimants' allegations, and defenses of Respondent Ali Kolaghassi.

Respondent J.W. Gant & Associates, Inc., pursuant to an agreement of the parties incorporated the Answer of J. Patrick Driver as its own.

RELIEF REQUESTED

Claimant Al-Faqih requested:

1. actual damages in the amount of \$6,750.00;
2. interest from the day of the sale of Celebrity;
3. filing fees;
4. missed time at work.

Claimant Effat Unis requested:

1. actual damages in the amount of \$2,750.00;
2. interest from the day of the sale of Celebrity;
3. filing fees;
4. missed time at work.

Respondent Kolaghassi requested:

1. that all claims against him be dismissed with prejudice;
2. attorneys' fees;
3. costs;
4. such further relief as the arbitrator deems appropriate.

Respondent J. Patrick Driver requested:

1. that all claims against him be dismissed with prejudice;
2. attorneys' fees;
3. costs;
4. such other relief as the arbitrator deems appropriate.

Respondent J.W. Gant & Associates Inc., requested:

1. that all claims against it be dismissed with prejudice;
2. attorneys' fees;
3. costs;
4. such other relief as the arbitrator deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondents' Motion to Prohibit Introduction of Evidence at Hearing is denied.

2. The Statement of J. Patrick Driver and all proffered documentary evidence are received without objection.
3. The addition of J.W. Gant & Associates Inc., as a party Respondent in lieu of J. Patrick Driver by consent of all parties is granted and the case against Mr. Driver is dismissed.

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. The decision is hereby rendered in favor of respondents and the Statement of Claim is dismissed in its entirety.
2. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 session x \$200 = \$200 less hearing deposit of \$200 = \$0 due

The N.A.S.D. shall retain the \$75 claim filing fee previously paid by Claimants.

ARBITRATOR SIGNATURES


Edgar T. Bellinger, Esq.
Public Arbitrator

Date of Decision: July 24, 1992