

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Daniel P. and R. Adelle Masto
Daniel P. Masto M.D. Medical Corporation
Daniel P. Masto TTEE Money Purchase Pension Plan
Daniel P. Masto TTEE Defined Benefit Pension Plan
Daniel P. Masto Custodian for Stephen Masto
Daniel P. Masto Custodian for Philip Masto
Daniel P. Masto Custodian for Julie Masto
Daniel P. Masto Custodian for Laurie Masto

NASD Arbitration
No. 92-00709

Name of Respondents

Kennedy, Cabot & Company
Mark Fink
Rob Gonzalez
Peter DeVries

REPRESENTATION

For Claimants: David G. Freedman - Miller & Holguin - Los Angeles,
California
Richard B. Leavitt, Esq. - Beverly Hills, California

For Respondents: Michael J. Abbott - Jones, Bell, Simpson & Abbott; Los
Angeles, California

Mark Fink, In Pro Se

CASE INFORMATION

Statement of Claim filed: February 27, 1992

Claimants' Submission Agreements signed: March 18, 1992

Statement of Answer filed by Respondent: June 10, 1992

Respondents' Submission Agreements signed: April 28, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions:

February 1, 1993	-	Two Sessions
February 2, 1993	-	Two Sessions
February 3, 1993	-	Two Sessions
February 4, 1993	-	Two Sessions
February 5, 1993	-	Two Sessions
February 11, 1993	-	Two Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants (Masto) alleged that Respondents, Kennedy Cabot & Company, Mark Fink, Rod Gonzales and Peter DeVries (Respondents) breached their statutory duties to Masto by urging and involving Masto to engage in risky speculative securities and high-yield "junk" bond trading despite the conservation investment objectives of Masto. Masto also alleged various other acts which were not in Masto's best interests, including "churning".

Respondents, answering jointly, and by way of Counterclaim, alleged that, at no time did they urge Masto to engage in risky or speculative trading. Masto, having told the Respondents Fink and Gonzales of his desires to trade in risky and speculative securities, sought recommendations from Fink and Gonzales concerning available securities which would meet his investment objectives.

Respondents counterclaimed against Masto for indemnification with respect to any damages sought or obtained on behalf of the Daniel P. Masto, M.D. Medical Corporation Money Purchase Pension Plan and the Daniel P. Masto, M.D. Medical Corporation Defined Benefit Plan in that Mast as Trustee of said plans is prohibited by law from transferring to any other person or entity his fiduciary obligations.

Respondents also counterclaimed against Masto for indemnification with respect to losses in the Custodian accounts in that he breached the standard of care imposed on Masto as a Custodian.

RELIEF REQUESTED

Claimants seek to recover actual damages of \$2,858,964.00, interest, punitive damages and costs.

Respondents seek dismissal of the claim in its entirety, costs and , by way of counterclaim, indemnification.

OTHER ISSUES CONSIDERED & DECIDED

This claim was originally filed in United District Court for the Central District of California, File No. 91 2750 (ER) EX). By stipulation, the Court order the matter to arbitration.

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 original remain on file with the NASD.

AWARD

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

1. After considering all claims and counterclaims on behalf of all Claimants and all Respondents, the panel determined to award to the Claimant parties, collectively, the sum of Four Hundred Sixteen Thousand Dollars and No Cents (\$416,000.00). Said amount includes any claims for interest. Accordingly, this award includes and represents the net for all awards relating to all the claims and counterclaims made by the parties. All Respondents are jointly and severally liable for said sum awarded.
2. The parties shall each bear their respective costs and fees, including attorneys' fees.
3. Claimants' claim for punitive damages is denied.
4. The NASD shall retain all fees and deposits made by the parties.

FORUM FEES

No additional fees were assessed.

ARBITRATORS

Name _____ Public/Industry

Larry Edmonson

Public

Concurring Arbitrators' Signatures

Larry Edmonson

Served 3/9/93

Date of Decision:

2/11/93