

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Fred W. O'Green, Mildred G. O'Green
Susan R. O'Green, Eric O'Green,
Jane O'Green Koenig, and John O'Green

NASD Arbitration
No. 92-01065

Name of Respondent(s)

Kayne, Anderson & Co., Inc., and
Benjamin Bush, Richard Kayne, and
John Anderson, individually

REPRESENTATION

For Claimants: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, California

For Respondents: Stephen Young, Esq., Keesal, Young & Logan, Long Beach, California

CASE INFORMATION

Statement of Claim filed: March 24, 1992

Claimants' Submission Agreements signed: February 28, 1992

Response to Statement of Claim and Request for Pre-Arbitration Hearing and Dismissal of Claims based on Statutes of Limitations filed by Respondents: June 24, 1992

Respondents' Submission Agreements signed as follows:

Kayne, Anderson & Co., Inc.: July 6, 1992
Benjamin Bush: September 2, 1992
Richard Kayne: June 30, 1992
John Anderson: June 19, 1992

HEARING INFORMATION

Pre-Hearing Conference Date/Session: July 7, 1993 (one session)

Hearing Dates/Sessions: July 19, 1993 (two sessions)
July 20, 1993 (two sessions)

July 21, 1993 (two sessions)
July 22, 1993 (two sessions)
July 23, 1993 (two sessions)
August 13, 1993 (two sessions)
August 19, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged unauthorized and unsuitable security transactions, churning, misrepresentation, fraud, lack of supervision and breach of fiduciary duty and violation of the Racketeer Influenced and Corrupt Organization Act (RICO). Claimants further alleged that Respondent Bush employed an extremely speculative trading strategy which included options and futures trading, short selling and heavy use of margin and that this type of trading caused Claimants to suffer losses in their accounts. Claimants also alleged that their primary objectives were safety of principal and portfolio growth consistent with limited risk and that Respondent Bush acted in reckless disregard of the investment objectives which had been set for Claimants' accounts. Claimants further alleged churning and alleged that Respondent Bush furthered his wrongdoing by continually misrepresenting the situation and his intentions to Claimants and in doing so denied them the opportunity to mitigate their damages earlier, thus constituting violations of RICO.

Respondents denied generally and specifically each and every allegation of wrongful, improper, or actionable conduct set forth in the Statement of Claim. Respondents also alleged that claims with respect to the majority of Claimants' losses in their Kayne, Anderson accounts are barred as a matter of law by the applicable limitations periods. Respondents further alleged that Fred W. O'Green is a sophisticated, wealthy, well-educated businessman and that Claimants never had conservatism as their primary investment objective, but instead were seeking high returns. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. General damages in the approximate amount of \$6,400,000.00;
2. Punitive damages in such amount as the panel may determine;
3. Interest on any damages awarded from the date of loss;
4. Costs and reasonable attorneys' fees; and
5. Treble damages as provided by RICO.

Respondents requested:

1. Dismissal of all claims against Respondents;
2. Costs; and
3. Such other and further relief as the panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

During a pre-hearing conference on July 7, 1993, the arbitrators reviewed and considered the written and oral positions of the parties' counsel relative to Respondents' Motion to Dismiss under Section 15 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure (Code), Motion to Dismiss based on statutes of limitations, Motion to Dismiss RICO claim and Motion to Dismiss Richard Kayne and John Anderson.

The arbitrators granted Respondents' Motion to Dismiss under Section 15 of the Code with respect to any transactions that occurred before March 25, 1986.

Respondents' Motion to Dismiss based on statutes of limitations was denied without prejudice to the parties presenting additional arguments on this issue during the evidentiary hearing.

The arbitrators granted Respondents' Motion to Dismiss all claims against Richard Kayne and John Anderson, individually.

H Thomas Fehn, Esq., counsel for Claimants, advised the arbitrators that Claimants withdrew their claims under RICO.

During the evidentiary hearing, the arbitrators were advised that Claimants, Susan R. O'Green, Eric O'Green, Jane O'Green Koenig and John O'Green withdrew as Claimants in this matter, having reached a settlement with Respondents.

During the evidentiary hearing, the arbitrators considered the positions of counsel relative to Claimants' request that the arbitrators reconsider their pre-hearing ruling dismissing Claimants' claims against Richard Kayne and John Anderson, individually. The arbitrators denied Claimants' request.

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence

presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Kayne, Anderson & Co., Inc. and Benjamin Bush are jointly and severally liable for and shall pay to Claimants, Fred W. O'Green and Mildred G. O'Green the sum of \$3,535,350.00, inclusive of interest. Interest on this amount at 8% per annum is due beginning on the thirty first day following the date of the formal announcement of this Award.

2. Claimants' claim for punitive damages is denied.

3. Claimants' Motion for a Reasoned Decision by the arbitrators is denied.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,500.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against:

Respondents, Kayne, Anderson & Co., Inc. and Benjamin Bush, jointly and severally, in the amount of \$21,300.00, calculated as follows: One pre-hearing session times \$300.00/session plus fourteen hearing sessions times \$1,500.00/session.


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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Aaron Fenton, Esq.	Public Arbitrator
Harry Miller	Public Arbitrator
John P. McShane	Industry Arbitrator

Concurring Arbitrators' Signatures



Aaron Fenton, Esq.

Harry Miller

John P. McShane

Date of Decision: _____

Served 10/20/93

ARBITRATORS

Public/Industry
Industry Panelist
Public Chairperson
Public Panelist

Concurring Arbitrators' Signatures

Charles D. Behm

Date of Decision: 11-9-92

Case Served 11/30/1992

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert Ferrin

92-01070

Name of Respondent

Janney Montgomery Scott, Inc.

REPRESENTATION

For Claimant Robert Ferrin ("Claimant"): Anthony J. Horn, Attorney at Law.

For Respondent Janney Montgomery Scott, Inc. ("Respondent"): Elizabeth Hoop Fay of the law firm Morgan, Lewis & Bockius.

CASE INFORMATION

Statement of Claim filed: March 24, 1992.

Claimant's Submission Agreement signed on: February 29, 1992.

Statement of Answer filed by Respondent on: May 22, 1992.

Respondent's Submission Agreement signed on: May 20, 1992.

HEARING INFORMATION

Hearing Date/Sessions: December 16, 1992, two sessions.

Hearing Location: NASD Office, Philadelphia, PA.

CASE SUMMARY

Claimant alleged that during the week of October 19, 1987 he attempted to sell his shares of Royal Gold, Inc. through the Respondent's agent. Claimant alleged that Respondent's agent

would not execute his order in a timely fashion. Claimant alleged that Respondent gave preference to other customers over those at Respondent's Linwood branch. Claimant alleged that due to the wrongful conduct of Respondent, Claimant suffered monetary damages.

Respondent denied all of Claimants allegation and maintained that in the days following October 19, 1987 the market for Royal Gold stock was illiquid. Respondent maintained that the market maker who entered a bid quotation was not willing nor required to buy or sell more than 100 shares. Respondent maintained that during the days following the crash, it performed its market making function in Royal Gold to the best of its ability. Respondent denied that it gave preference to customers of other branches over its Linwood Branch. Respondent maintained that as there were no buyers for Claimants Royal Gold stock he did not have a legal obligation to execute Claimant's order.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$52,520 plus interest thereon and all costs and fees associated with this arbitration.

Respondent requested that an award be entered in its favor and against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

AWARD

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

1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrators assessed forum fees.


Two hearing sessions were conducted in this matter at \$500 per session so that \$1000 in hearing session fees are assessed as follows:

Claimant's initial hearing deposit of \$500 is retained and shall cover the cost of the first hearing session. The parties are to share the cost of the second hearing session. Claimant is assessed forum fees in the amount of \$250 and Respondent is assessed forum fees in the amount of \$250.

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

Concurring Arbitrator's Signature

Public/Industry


Edward T. Borer

Industry Arbitrator

Date of Decision: January 27, 1993

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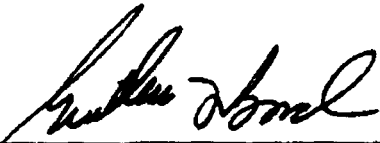
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Concurring Arbitrator's Signature

Public/Industry



Guillermo L. Bosch. Esq./Chairman

Public Arbitrator

Date of Decision: January 27, 1993

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Award #92-01070

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

Concurring Arbitrator's Signature

Public/Industry

Chess B. Faircloth 1/20/93
Chess B. Faircloth

Public Arbitrator

Date of Decision: January 27, 1993