

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Josef Rotter

vs.

NASD #92-1761

Name of Respondents

David Paul Kane, Kennedy Cabot & Company, Inc.

REPRESENTATION

For Claimant: Frank S. Carleo, Esq., Inglewood, CA

For Respondents: George H. Kupper, Esq., Kennedy Cabot & Co., Inc., Beverly Hills, CA

CASE INFORMATION

Statement of Claim filed: May 27, 1992

Claimant's Submission Agreement signed: May 15, 1993

Statement of Answer filed by Respondents on: September 10, 1992

Respondents' Submission Agreements signed on: September 8, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): None

Hearing Date/(Sessions): June 10, 1993, (one) October 12, 1993 (two)

Hearing Location: Los Angeles, CA

CASE SUMMARY

Claimant alleged: Breach of employment agreement arising out of his creating and managing an Insurance Department for Respondents. Claimant worked for Respondent Kennedy Cabot (KCC) from July 1, 1990 to March 1, 1991 as Insurance Department Manager. He did not sell any securities and no such sales were expected of him. He developed a department which consisted of five agents and 23 licensed individuals. Claimant's NASD licenses were also kept active with KCC. However, when it became obvious that the brokers in the Insurance Department had the potential of making more money than brokers in the fixed income department, the risk of creating a department that would attract persons away from the investment business became real. At that point, the Insurance Department was not supported.

On February 1, 1991, Respondent Kane advised Claimant that as of March 1 he would no longer receive a salary and would have to be a commission only broker. Rotter advised Kane that this change was a violation of their agreement but would stay if he were relieved of his duties as a manager. On February 6, Claimant was asked to leave immediately and that he would be paid off. There were also problems with incorrect information being put on Claimant's U-5 form, which Respondents would only correct if he signed a waiver holding KCC harmless of liability.

Respondents denied all substantive allegations of the Statement of Claim and alleged: In the time that Claimant managed the Insurance Department it did not make a profit, and his poor management caused low morale among the employees. Claimant kept most of the good leads for himself and had a lack of production problem.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$500,000;
2. Attorney's fees and costs;
3. Punitive damages;
4. Fines for violations of California Labor Laws.

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

1. Respondents are jointly and severally liable for and shall pay claimant \$1,619.13 in compensatory damages;
2. All other claims, including the claim for punitive damages, are dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The initial hearing deposit was waived by the Director of Arbitration. Forum fees assessed against:

Respondents, jointly and severally, for \$2,250.00 calculated as follows: Three hearing sessions at \$ 750 /hearing session, equals \$ 2,250.00.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signature



Diana G. Davis, Esq.

John P. McShane

Andrew J. Sorensen

Date of Decision:

Date Served: 10/28/93