

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Henry Heth

No. 92-02627

Name of Respondents

Jerry Kopf
Kessler Asher Clearing, Inc.

Name of Third Party Respondent

Steven Solomon

REPRESENTATION OF PARTIES

For Claimant: Brian K. Lowe, Investors Arbitration Services, Inc.

For Respondent Jerry Kopf: James L. Schwartz, Esq. of Schwartz and Sachse, P.C., Chicago, Illinois.

For Respondent Kessler Asher Clearing, Inc.: Matthew D. Wayne, Esq. of Fishman & Merrick, Chicago, Illinois.

Third Party Respondent Steven Solomon has never filed an appearance, never filed an Answer, and has never responded to any correspondence from the NASD.

CASE INFORMATION

Statement of Claim filed: August 6, 1992.

Claimants' Submission Agreement signed on: June 27, 1992.

Statement of Answer filed by Respondent, Jerry Kopf on: October 9, 1992.

Respondent Jerry Kopf's Submission Agreement signed on: October 6, 1992.

Statement of Answer, Affirmative Defenses and Request for Pre-hearing Conference to Hear Oral Argument on Motion to Dismiss filed by Respondent, Kessler Asher Clearing, Inc. on: November 17, 1992.

Respondent Kessler Asher Clearing, Inc.'s Submission Agreement signed on: November 16, 1992.

Claimant's Response to Respondents' Motion to Dismiss filed: December 9, 1992.

Respondent Jerry Kopf's Motion to Dismiss filed: February 22, 1993.

HEARING INFORMATION

On March 1, 1993, a telephonic hearing lasting a total of one (1) session was held between Claimant Henry Heth, and Respondents Kessler Asher Clearing, Inc. and Jerry Kopf on the issue of Respondents' Motions to Dismiss. Also present at the hearing were the undersigned arbitrators, and staff counsel from the Chicago regional arbitration office of the NASD.

CASE SUMMARY AND OTHER ISSUES

Claimant, Henry Heth ("Claimant") alleged unsuitable investments, negligence, omission of material facts, misstatement of material facts, churning, violation of SEC Rule 10(b)-5, failure to supervise, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing by Respondents Jerry Kopf ("Kopf") and Kessler Asher Clearing, Inc. ("KAC"). The allegations arose out of trading activity in Claimant's account at KAC spanning a period from January 29, 1990 through November of 1990.

Kopf denied each and every material allegation of liability contained in the Statement of claim. In addition, Kopf asserted the following affirmative defenses:

1. Claimant's Statement of Claim contains numerous counts where he fails to state a cause of action for which relief may be granted.
2. Most of Claimant's claims are barred by the applicable statute of limitations.

3. If there is any liability against Kopf, which Kopf denied, the responsibility for said actions was caused by Steven Solomon and not by Kopf.

Kopf also asserted a Third Party Claim against Steven Solomon for any liability that may be found against him.

In its Answer, KAC denied the allegations contained in the Statement of Claim. KAC asserted that the Claimant had not asserted any legal authority to support his position that contrary to the terms of his customer agreement with KAC, that KAC was liable for failing to supervise transactions executed by Steven Solomon under a power of attorney and full trading authorization from the Claimant, with a full indemnification to KAC from the Claimant. In addition, KAC asserted a Motion to Dismiss the Statement of Claim based on statute of limitations, Claimant's admissions, the contracts between KAC and Claimant, including Claimant's indemnification of KAC, and the failure of the legal elements of the remaining claims to support a cause of action.

On December 9, 1992, Claimant filed a response to the Motion to Dismiss. Claimant asserted that the cases cited by KAC did not apply to the present arbitration. Claimant further asserted that the existence of an attorney-in-fact who had discretion over Claimant's account was irrelevant. Claimant further asserted that KAC had requested relief not allowed by the code, and that the primary purpose of arbitration is to provide a straightforward, fact-based forum for the resolution of disputes.

On February 3, 1993, KAC renewed their request for a pre-hearing conference on its Motion to Dismiss.

On February 22, 1993, Kopf filed his separate Motion to Dismiss the Statement of Claim with the NASD. In the Motion, Kopf adopted and incorporated by reference the Motion to Dismiss that had previously been filed by KAC.

Pursuant to KAC's request for a pre-hearing conference, and also to resolve the issues raised by Kopf's and KAC's Motions to Dismiss, the undersigned arbitrators agreed to hold a pre-hearing conference. After consulting with the parties and arbitrators, the pre-hearing was set for March 1, 1993.

On March 1, 1993, at 2:00 p.m. CST, a telephonic pre-hearing conference was held between the parties. After hearing argument, and rebuttal argument, from all parties present at the hearing, and deliberation, the arbitrators granted the Motions to Dismiss.

RELIEF REQUESTED

Claimant requested a joint and several award against the Respondents as follows:

1. Compensatory damages of \$48,360.09;

2. Pre-award and post-award interest at the maximum rate allowed by law, figured from the date of the first transaction;

3. Costs of arbitration, including filing fees, attorneys' fees, expert witness fees, and any other costs and fees deemed appropriate; and

4. Punitive damages in an amount sufficient to punish Respondents for their alleged willful and outrageous conduct, and to serve as an example to discourage such conduct in the future.

5. Respondent KAC's Motion to Dismiss be denied.

Respondent Kopf requested that there be an award in his favor and that he recover his costs in this matter, including attorneys' fees. However, if liability were found against Kopf, Kopf requested liability over against Steven Solomon and that Kopf recover his costs and attorneys' fees in connection with this action. Kopf also asserts a Third Party Claim against Steven Solomon, and requested that Solomon be found liable for any amounts Kopf may be held liable for, and that Solomon be ordered to pay all of Kopf's costs, including attorneys' fees.

Respondent KAC requested that Claimant's Statement of Claim be dismissed in its entirety. Alternatively, KAC requested that in the event that KAC's Motion to Dismiss were denied, Claimant be ordered to place \$7,500.00 in escrow with the NASD in the event after a full hearing, Claimant is ordered to pay KAC's attorneys' fees.

AWARD

After considering the Motions to Dismiss, Response to the Motions, and oral arguments made at a hearing held on March 1, 1993, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and rule as follows:

1. Claimant, Henry Heth's claims asserted in his Statement of Claim against Respondents Kessler Asher Clearing, Inc. and Jerry Kopf are hereby denied and dismissed with prejudice.

2. Respondent Jerry Kopf's Third Party Claim against Third Party Respondent Steven Solomon is hereby denied and dismissed with prejudice.

OTHER COSTS

3. Each party shall bear its own costs, expenses, and fees, including attorneys' fees, associated with this arbitration.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing conference session X \$300.00 = \$300.00

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain \$300.00 of the \$400.00 hearing session deposit previously paid to the NASD by the Claimant. The NASD shall refund \$100.00 of Claimant's hearing session deposit.


Pursuant to Section 43(c) and (e) of the Code of Arbitration Procedure, Respondent Jerry Kopf is liable for, and shall pay to the NASD a Third Party Claim filing fee in the amount of \$250.00 for his claim asserted against Steven Solomon.

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

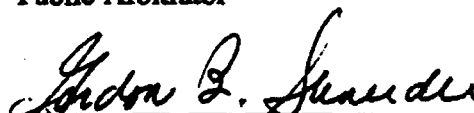
CONCURRING ARBITRATORS

Dated:

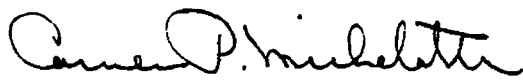
March 9, 1993


Honorable Saul A. Epton
Presiding Chair
Public Arbitrator

March 16, 1993


Gordon B. Schneider
Public Arbitrator

March 14, 1993


Carmen P. Michelotti
Industry Arbitrator

Date of Service by the NASD: 3/22/93