

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Louis A. Salinas

92-02741

**Name of Respondents**

J.W. Gant and Associates, Inc.;  
Kober Financial Corp.;  
Edward L. Rowell;  
Christopher Thomas;  
James Price

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**REPRESENTATION**

For Claimant: Louis A. Salinas was represented by Victor N. Makris, Esq. of Makris Attorneys and Counselors, located in Houston, Texas.

For Respondents: J.W. Gant and Associates, Inc. did not appear at hearing.

Kober Financial Corp. did not appear at hearing.

Edward L. Rowell appeared pro se.

Christopher Thomas appeared pro se.

James Price did not appear at hearing.

**CASE INFORMATION**

Statement of Claim filed: August 17, 1992.

Claimant's Submission Agreement signed on: May 8, 1992.  
Supplement to the Statement of Claim filed: September 3, 1992.

Respondent J.W. Gant and Associates, Inc. did not file a Statement of Answer or an executed Submission Agreement.

Statement of Answer filed by Respondent Kober Financial Corp. on: September 17, 1992.  
Respondent Kober Financial Corp.'s Submission Agreement signed on: April 29, 1993 by Peter N. Bowinski, Treasurer, Kober Financial Corp.  
A late Supplemental Statement of Answer was filed on May 17, 1993, but was not forwarded to the panel.

Statement of Answer filed by Respondent Edward L. Rowell on: September 17, 1992.  
Respondent Edward L. Rowell's Submission Agreement signed on: September 17, 1992.

Respondent Christopher Thomas did not file a Statement of Answer or an executed submission agreement.

Statement of Answer filed by Respondent James Price on: September 21, 1992  
Respondent James Price's Submission Agreement signed on: November 25, 1992.  
Motion to Dismiss filed by Respondent James Price on: May 14, 1993.

Motion to Change Hearing Situs or Appear by Telephone filed by Respondents Edward L. Rowell, Christopher Thomas and James Price filed: December 8, 1992.  
Response to Motion to Change Hearing Situs or Appear by Telephone filed by Claimant Louis Salinas on: March 10, 1993.

#### **HEARING INFORMATION**

Pre-Hearing Conference:	None Held.
Hearing Date/Sessions:	May 18, 1993 for Two (2) sessions.
Hearing Location:	Houston, Texas.

#### **CASE SUMMARY**

Claimant Louis Salinas ("Salinas") alleged that Respondents Edward L. Rowell ("Rowell"),

Christopher Thomas ("Thomas") and James Price ("Price"), while employed by or acting as agents for Respondent J.W. Gant and Associates, Inc. ("J.W. Gant"), engaged in unauthorized transactions, misrepresented the safety and integrity of an investment in Boca Raton Capital Corp. ("Boca") stock, and sold him an investment which was unsuitable given the purpose of the account. Salinas specifically alleged that:

1. In November, 1991, Thomas cold-called Salinas and offered several options for investment through J.W. Gant, including IBM common stock. Salinas opened two custodial accounts for his children's education by purchasing 50 shares of IBM stock for each account and indicated on the New Account Form that the objective was long-term growth;
2. On February 21, 1992, Salinas received a call from Rowell, who identified himself as Thomas' supervisor. Rowell recommended a new strategy, advising that Salinas sell the IBM stock and purchase shares of Boca Raton Capital Corp. which he stated looked more promising than the IBM stock, at least on a short-term basis. Rowell did not offer a prospectus or any other information about Boca. Salinas did not approve of the transaction, but agreed to discuss the matter with Thomas before any transaction was made;
3. On February 26, 1992, Salinas received confirmations showing that the IBM stock had been sold and Boca purchased. Salinas called Thomas on February 28, 1992 and complained of the transactions, stating that they were not authorized. Rowell joined the call and stated that Boca was no more risky than IBM and that he would not rescind the transaction;
4. Salinas sent a check to cover the difference in the proceeds from IBM and the purchase of Boca because of Salinas' impression that he was stuck with the trade and Thomas representation that failure to pay would result in something bad happening;
5. Both Thomas and Rowell continued to reassure Salinas that Boca was a "wise investment". Thomas refused to provide any further assistance providing information about the company or its stock and continued to mismanage the account until Salinas discharged him and J.W. Gant in June of 1992.

Respondent James Price ("Price") was named as a party because he was the supervisor of Rowell and Thomas, was Branch Manager of the Gant office and refused to look into Salinas when approached about the accounts. In addition, Respondent Kober Financial Corporation ("Kober") was named as a party because of the transfer and assumption of J.W. Gant's assets and accounts.

Respondent Kober denied any liability, alleging that the activity complained of occurred with

and through J.W. Gant, not Kober. In addition, Kober alleged that because the NASD was overseeing the self-liquidation of J.W. Gant, Salinas was seeking a "deep pocket."

Respondent Rowell denied the material allegations of the Claim, alleging that:

1. Salinas opened the accounts in December of 1991 with the investment objectives of long-term growth. However, the New Account Forms were not signed and another New Account Form was requested. These were returned marked growth with risk and speculation;
2. In order to purchase 20,000 shares of Boca for each account, Salinas was required to make payment of \$525.91 in each account which was received by check on March 10, 1992. The transaction was fully authorized and the payment evidences that matter;
3. Neither account was discretionary and was not treated as such.

Respondent Thomas did not file a Statement of Answer, but appeared and testified at the hearing, denying any liability to the Claimant Salinas.

Respondent Price denied any liability to Salinas, alleging that:

1. Salinas' account card stated speculation as a investment objective and had no reason to doubt the validity of the transaction. The additional money needed to complete the trades was received on March 10, 1992 with no complaint of unauthorized trades;
2. Sometime after the trades, Salinas called and requested information about Boca and to express dissatisfaction with the way Boca was trading. Sometime after this conversation, Salinas called Price again complaining of unauthorized trades. Price inquired as to why this accusation was not made during the prior conversation. Salinas made no reply;
3. The complaint went to the J.W. Gant compliance officer who found it to be without substance.

#### **RELIEF REQUESTED**

Claimant Salinas requested that the panel enter an award for rescission of the transaction, with a return of the \$10,060.00 and additional compensatory damages, for a total of \$25,000.00.

Respondent Kober requested that it be dismissed from this action.

Respondent Edward L. Rowell made no specific relief request, but orally requested dismissal at hearing.

Respondent Christopher Thomas orally requested dismissal at hearing.

Respondent James Price requested dismissal of the arbitration against himself.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent J.W. Gant & Associates, Inc. did not file an Answer or an executed submission agreement. Upon review, the panel has determined that Respondent J.W. Gant was properly served with the Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure. In addition, the panel has determined that Respondent J.W. Gant received notice of the hearing pursuant to Section 26 of the NASD Code of Arbitration Procedure and that hearing would continue pursuant to Section 29 of the NASD Code of Arbitration Procedure. As a member firm at the time the dispute arose, Respondent J. W. Gant & Associates, Inc. is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

Respondent Christopher Thomas did not file an executed submission agreement, but appeared and testified at the hearing. In addition, as an associated person of a member firm at the time the dispute arose, Respondent Thomas is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

On September 17, 1992, Respondent Kober Financial Corp. filed a Motion to Dismiss. Upon review, the panel has determined that the Motion shall be granted.

On December 2, 1992, Respondent Edward L. Rowell, Christopher Thomas and James Price filed a Motion to Change Hearing Situs or Appear by Telephone. Upon review of the Motion and all responses filed, the Panel denied the Motion on April 1, 1993.

On May 14, 1993, Respondent James Price filed a Motion to Dismiss. Upon review, the Panel has determined that the Motion shall be denied.

### AWARD

After considering the pleading, 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. Respondent J.W. Gant & Associates, Inc., Edward L. Rowell, Christopher Thomas and James Price are jointly and severally liable for and shall pay to Claimant Louis A. Salinas the sum of \$9,000.00 plus interest at the rate of 6% per annum from the date of service of the award until the sum is paid in full;
2. In addition, Respondents J.W. Gant & Associates, Inc. and James Price are jointly and severally liable for and shall pay to Claimant Louis A. Salinas the sum of \$1,500.00 as attorneys' fees. Respondents Christopher Thomas and Edward L. Rowell are jointly and severally liable for and shall pay to Claimant Louis A. Salinas the sum of \$2,250.00 as attorneys' fees. In determining to award attorneys' fees to Claimant, the panel considered the arguments of the parties, as well as the breach of contract, and determined that authority existed for an award of attorneys' fees to the Claimant, Louis A. Salinas;
3. Respondent Kober Financial Corp.'s hereby dismissed with prejudice;
4. Respondent James Price's Motion to Dismiss is denied;
5. All other costs of arbitration shall be borne by the party incurring the cost, including attorneys' fees, except for those specifically enumerated herein.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$400.00 per hearing session = \$800.00.

The National Association of Securities Dealers, Inc. shall retain the \$100.00 claim filing fee and refund the \$400.00 hearing session deposit previously deposited by the Claimant, Louis A. Salinas. Respondents J.W. Gant & Co., Inc., Edward L. Rowell, Christopher Thomas and James Price are jointly and severally liable for and shall pay to the NASD the sum of \$800.00 as forum fees incurred in the above manner.

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

Concurring Arbitrators' Signatures

Name

Date

Raymond L. Britton, Jr.  
Raymond L. Britton, Jr., Esq.  
Public Arbitrator  
Chairperson

Aug. 4, 1993

W. Merrill Glasgow  
W. Merrill Glasgow  
Public Arbitrator

Aug. 13, 1993

Thomas J. Eiseby  
Thomas J. Eiseby  
Industry Arbitrator

Aug. 13, 1993

For NASD Use Only

Date of Service of Award: \_\_\_\_\_