

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Victor Brown

Case No. 92-03102

Name of Respondents

GKN Securities Corp.;
Bear, Stearns & Co., Inc.

REPRESENTATION

For Claimant, Victor Brown ("Brown"): was represented by Andrew Mosberg, CPA, of Aventura, Florida.

For Respondent, GKN Securities Corp. ("GKN"): was represented by Andrea Goldman, Esq. of GKN Securities Corp., New York, New York.

Bear, Stearns & Co., Inc. ("Bear, Stearns"): was represented by William C. Mallery, Esq. of Bear, Stearns & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: September 15, 1992. Claimant's Submission Agreement signed on: September 8, 1992.

Statement of Answer filed by Respondent GKN Securities Corp. on: November 24, 1992.

Respondent GKN Securities Corp.'s Submission Agreement signed on: November 24, 1993 by Bernard Golembe, Executive Vice President, GKN Securities Corp.

Statement of Answer filed by Respondent Bear, Stearns & Co., Inc. on: November 24, 1992.

Respondent Bear, Stearns & Co., Inc.'s signed on: November 24, 1992 by Raymond Aronson, Managing Director, Bear, Stearns & Co., Inc.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: June 28, 1992 for Two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

CASE SUMMARY

Claimant, Victor Brown, alleged that Respondents GKN Securities Corp. improperly canceled a purchase of 5000 units of Trinity Capital Opportunity Corp. because his funds, sent by wire transfer, were received the day after the settlement date. Prior to the notification that the trade was canceled, Brown had sold the units, leaving him in a short position and requiring the purchase of stock on the open market.

Respondent GKN Securities Corp. denied the material allegations of the Statement of Claim, alleging that:

1. The Trinity Capital Securities was an initial public offering and the underwriters were required to pay Trinity, the issuer, for the underwritten securities on settlement date;
2. GKN's policy was that any new issue requires that the customer have sufficient funds to pay for the new issue in the account by settlement date or the purchase would be canceled. Brown was aware of this requirement;
3. The funds were received the day after the settlement date and the trade was canceled and Brown was notified;
4. GKN was not responsible for Brown's sale of the securities at another brokerage firm when they had not been properly paid for at GKN and is not responsible for the short position or any result.

Respondent Bear, Stearns & Co., Inc. denied any liability, alleging that it only acted as the clearing broker for GKN and was not responsible for supervising Brown's account pursuant to the agreement between GKN and Bear Stearns.

RELIEF REQUESTED

Claimant Brown requested that the panel enter an award against Respondents for the sum of \$12,502.00 plus the costs of arbitration.

Respondent GKN requested that an award be entered in its favor, dismissing Brown's claim with prejudice and for such further relief as the panel deemed just.

Respondent Bear Stearns requested that an award be issued in its favor, dismissing Brown's claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Bear Stearns filed a Motion to Dismiss pursuant to Section 16 of the NASD Code of Arbitration procedure. Claimant Brown filed a Response to Motion dated December 28, 1992. Brown agreed to dismiss his complaint against Bear Stearns, but continued his claim against GKN.

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 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. Claimant Victor Brown is liable for and shall pay to Respondent GKN Securities Corp. the sum of \$500.00 as attorneys' fees. In determining to award attorneys' fees to the Respondent, the panel considered Chapter 57 of the Florida Statutes, as well as the Federal Arbitration Act, and determined that they had the authority to award attorneys' fees to Respondent GKN Securities Corp.;
3. All other costs of arbitration shall be borne by the party incurring the cost, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total 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 non-refundable claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant,

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Victor Brown. Claimant Victor Brown is liable for and shall pay to the NASD additional forum fees in the sum of \$400.00.

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

Concurring Arbitrators' Signatures

Name

Date

/S/
Steven D. Elias, Esq.
Public Arbitrator
Chairperson

/S/
Burt R. Rose
Public Arbitrator

/S/
Terrence W. Grant
Industry Arbitrator

Date of Decision: July 29, 1993