

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

William E. Gilbert, trustee of
Willis E. Gilbert Trust

and

92-03370

Name of Respondents

Kennedy, Cabot & Co. and
Mark Fink

REPRESENTATION OF PARTIES

William E. Gilbert, trustee of Willis E. Gilbert Trust ("Claimant") was represented by James J. Zak, Esq. of Zak, Fox & Pehr, P.C., Westminster, Colorado.

Respondent Kennedy, Cabot & Co. was represented by George H. Kupper, Esq. of Kennedy, Cabot & Co., Beverly Hills, California.

Respondent Mark Fink appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about October 6, 1992. Submission Agreement of Claimant was signed on September 30, 1992 by William E. Gilbert as trustee of the Willis E. Gilbert Trust.

Statement of Answer of Respondent Kennedy, Cabot & Co. was filed on or about January 13, 1993. Submission Agreement of Respondent Kennedy, Cabot & Co. was signed on January 12, 1993 by George H. Kupper.

Statement of Answer of Respondent Mark Fink was filed on or about December 9, 1992. Submission Agreement of Respondent Mark Fink was signed on January 18, 1993.

HEARING INFORMATION

The hearing was held on Thursday, May 27, 1993 in Denver, Colorado for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Mark Fink made misrepresentations with respect to TWA, Inc. Senior Notes. Specifically, Claimant alleged that Mark Fink stated that he notes were collateralized when in fact they were not. Claimant further alleged that Mr. Fink was advised that the securities were being purchased for a trust and that the trust wanted safe investments and could not afford to lose the money invested.

Respondent Kennedy, Cabot & Co. stated that Mr. Gilbert called and placed an unsolicited order to purchase the bonds in dispute and that he was fully aware of the nature of the investment. Respondent Kennedy, Cabot & Co. also stated that the Claimant may have confused this particular bond with the TWA, Inc. bonds that were in fact collateralized and discussed between the Claimant and Mr. Fink.

Respondent Mark Fink stated that he merely took the Claimant's order and denied that he told the Claimant that the bonds were safe or collateralized.

RELIEF REQUESTED

Claimant requested an award in the amount of \$21,092.83 plus 17.25 % interest from the date of purchase, October 31, 1989.

Respondent Kennedy, Cabot & Co. requested that all claims be dismissed and that it not be found liable for any costs or forum fees in this arbitration.

Respondent Mark Fink requested that all of the requests for damages be dismissed and that no forum fees, costs or other costs be imposed upon him.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the N.A.S.D.

AWARD

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

1. The claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.

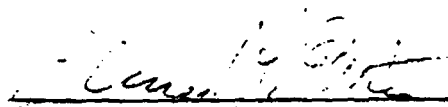
2. Each party shall bear its own cost, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the N.A.S.D. by the Claimant.

Forum fees are calculated at the rate of \$300.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:


Edmund Epstein, Esq.
Public Arbitrator, Presiding Chair

5-27-88