

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Tom Kirkpatrick

92-03745

Name of Respondents

Sanwa-BGK Securities Co., L.P.
William J. Kenney

REPRESENTATION

For Claimant, Tom Kirkpatrick: Hayward Richard Pressman, Esq.

For Respondent, Sanwa-BGK Securities Co., L.P.: Danforth Newcomb, Esq. of
Shearman & Sterling.

For Third Party Respondent, William Kenney: William Kenney appeared pro-se.

CASE INFORMATION

Claimant's Submission Agreement signed on October 27, 1992.
Statement of Claim filed on November 3, 1992.

Respondent, Sanwa-BGK Securities Co., L.P.'s Submission Agreement signed
on: March 15, 1992.

Statement of Answer and Third Party Claim filed by Respondent, Sanwa-BGK
Securities Co., L.P. on: March 16, 1993.

Third Party Respondent, William J. Kenney did not file an executed Submission
Agreement or a Statement of Answer.

HEARING INFORMATION

Hearing Date/Sessions: September 22, 1993 - Two Sessions.
September 23, 1993 - One Session.

Hearing Location: NASD Offices - New York, NY.

CASE SUMMARY

Claimant alleges that he was employed by Respondent, Sanwa-BGK Securities Co., L.P. ("Sanwa") as a trader. Claimant alleges that he verbally agreed with Sanwa that he would receive a salary of \$125,000 per year plus a bonus of \$50,000 for the years 1990 and 1991. Claimant alleges that he voluntarily terminated his employment with Sanwa and Sanwa breached their agreement by failing to pay his bonus for the years 1990 and 1991.

Respondent, Sanwa-BGK Securities Co., Inc. stated that any oral agreements made to the Claimant were made by Respondent William J. Kenney ("Kenney") of Kenneth L. Gestal. Sanwa admits that Claimant was an employee of Sanwa and that his salary was \$125,000 per year. Sanwa maintains that the bonuses they give to their employees are strictly discretionary, incentive bonuses. Sanwa denies that they ever made any oral agreement to give the Claimant a bonus in the amount stated in the Claim.

Respondent, William Kenney appeared at the hearing and stated that he hired many people, and that he negotiated salary bonus arrangements for several people at Sanwa. Kenney maintains that it was all done verbally. Kenney maintains that he did negotiate Claimant's bonus of \$50,000.00 but that at the end of 1990, he asked Claimant if he would accept half and defer the other half to the next year. Kenney maintains that at the end of 1991, he earmarked \$25,000.00 for the Claimant and believed it had been paid. Kenney stated that he was fired in 1992 and asked to provide a list of any individuals to whom monies were owed. Mr. Kenney did not produce such a list since he did not believe that any monies were due to Claimant or anyone else.

RELIEF REQUESTED

Claimant requested damages in the amount of \$218,800.00 plus attorney's fees.

Respondent, Sanwa-BGK Securities Co., L.P. requested that the Claim be dismissed in its entirety, indemnification from Third Party Respondent, William J. Kenney if the Claimant is awarded damages. Sanwa requested damages for Kenney's fraudulent conduct and breach of contract.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence and arguments of the parties and counsel presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Sanwa-BGK Securities Co., L.P. is hereby liable and shall pay to the Claimant the amount of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS AND NO CENTS). In addition, Respondent, Sanwa is hereby liable and shall pay to the Claimant interest in the amount of \$2,000.00 (TWO THOUSAND DOLLARS AND NO CENTS).
2. Respondent, William J. Kenney is hereby liable and shall pay to the Respondent, Sanwa-BGK Securities Co., L.P. the amount of \$7,500.00 (SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS). This amount is exclusive of interest.
3. Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 44 of the Code of Arbitration Procedure, the following forum fees are hereby assessed:

\$500.00	Non-refundable filing fee for claim
\$500.00	Non-refundable filing fee for third party claim
\$2,250.00	Hearing session fees (3 sessions x \$750.00)

1. Respondent, Sanwa-BGK Securities, Co., L.P. is hereby assessed total forum fees in the amount of \$3,250.00. This amount shall be paid as follows:

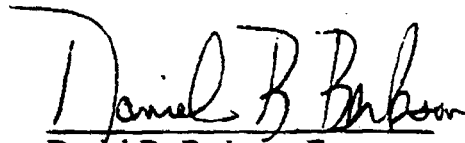
A) Sanwa shall re-imburse to the Claimant the amount of \$1,250.00 Claimant deposited with the NASD, Inc.

B) Sanwa shall pay the balance of \$2,000.00 to the NASD, Inc. Sanwa is entitled to offset this amount with the \$1,250.00 previously deposited with the NASD. Therefore, Sanwa shall pay the balance of \$750.00 to the NASD, Inc.

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Concurring Arbitrator's Signature
Name

Industry Arbitrator


Daniel B. Berkson, Esq.

Date of Decision: October 25, 1993

STATE OF NEW YORK S.S.:
COUNTY OF New York

On this 15 day of October, 1993, before me personally appeared Daniel B. Berkson know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



CAROL AMES
Notary Public, State of New York
No. 41-4784432
Qualified in Queens County
Commission Expires March 30, 1995

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Concurring Arbitrator's Signature
Name


Industry Arbitrator


John Curran, Esq.

Date of Decision: October 25, 1993

~~STATE OF NEW YORK~~ ^{CONNECTICUT} S.S.:
COUNTY OF ~~Fairfield~~

On this 20 day of October, 1993, before me personally appeared John Curran know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


PATRICIA M. CURRAN
NOTARY PUBLIC
MY COMMISSION EXPIRES ~~MARCH 01, 1992~~
FEB 27, 1997

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Concurring Arbitrator's Signature
Name

Industry Arbitrator

Kevin M. Kelly
Kevin M. Kelly

Date of Decision: October 25, 1993

STATE OF NEW YORK s.s.:
COUNTY OF NEW YORK

On this 19 day of October, 1993, before me personally appeared Kevin M. Kelly know to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Robin Anne Engelman

ROBIN ANNE ENGELMAN
Notary Public, State of New York
No. 24-4721378
Qualified in Kings County
Commission Expires Feb. 28, 1995