

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**Name of Claimants**

Jerry Kopf and Ben Stevens

93-00114

**Name of Respondents**

R.D. Kushnir & Co., Richard Kushnir, Joel Weiner,  
and Jack Cotto

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**REPRESENTATION OF PARTIES**

For Claimants, Jerry Kopf and Ben Stevens, at the hearing: Jerry Santangelo, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

For Respondent, R.D. Kushnir & Co., at the hearing, and for Respondents Richard Kushnir, Joel Weiner, and Jack Cotto: Matthew D. Wayne, Esq. of Fishman and Merrick, P.C., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: January 11, 1993. Claimants' Submission Agreement signed: January 27, 1993.

Joint Statement of Answer, Affirmative Defenses, and Counterclaim filed by Respondents: March 15, 1993. Amended counterclaim filed on: October 5, 1993.

Respondent, R.D. Kushnir & Co.'s Submission Agreement signed on: March 11, 1993. Respondent, Richard D. Kushnir's Submission Agreement signed on: April 26, 1993. Respondent, Joel M. Weiner's Submission Agreement signed on: February 18, 1993. Respondent Jack Cotto's Submission Agreement signed on: March 11, 1993.

**HEARING INFORMATION**

Prehearing conference: September 1, 1993 for one (1) session with the full panel.

Hearing dates: April 13, 1994 for two (2) sessions;  
April 14, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Jerry Kopf and Ben Stevens ("Claimants") alleged that Respondents Richard Kushnir ("Kushnir") and R.D. Kushnir & Company ("Company") agreed in writing, to register Claimants as brokers in various states, at his sole expense, and one of those states was Tennessee. Claimants also alleged that after becoming associated with the Company, they informed Respondents Joel Weiner ("Weiner") and Jack Cotto ("Cotto") that they had a client who resides in Tennessee and would open an account for him. Claimants alleged that Weiner and Cotto confirmed to Claimants that they were registered in Tennessee. Claimants further alleged that they placed orders for the purchase and sale of index options through the Company for their client in Tennessee, and at no time were they ever informed that they were not registered in Tennessee. Claimants incurred damages in settling with their client as a result of a court action their client brought against them for non-registration.

Respondents, the Company, Kushnir, Weiner, and Cotto generally denied the allegations set forth in the Statement of Claim and specifically denied that they agreed in writing to register Claimants in Tennessee and denied confirming that they were registered in Tennessee. In their counterclaim, respondents alleged that Claimants are liable for their share of attorney's fees incurred by the Company in defense of the court action which was filed by Claimant's client.

Respondent, the Company, in its Amended counterclaim, stated as Count I: Claimants are liable for 50% of the attorney's fees and costs it incurred to defend the litigation; in Count II: Claimants are liable for attorney's fees and costs it incurred as a result of Claimant's failure to get registered in Tennessee.

RELIEF REQUESTED

Claimants requested all amounts paid by them to their client in the action filed against them in the amount of \$130,000.00, as well as their costs in both the court action and this arbitration, including attorneys' fees.

Respondents requested that the Statement of Claim be denied in its entirety, and that Respondents be awarded their costs, including attorney's fees. In its counterclaim, R.D. Kushnir requested an award against Claimants, jointly and severally, in the amount of \$145,000.00, plus interest, costs, and attorney's fees. In its Amended counterclaim, R.D. Kushnir requested \$32,415.49 on Count I and \$134,832.98 on Count II, plus its attorney's fees and costs in bringing this counterclaim.

**OTHER ISSUES CONSIDERED & DECIDED**

Prior to the hearing, Respondents filed a Motion To Dismiss the Claim pursuant to Section 16 of the NASD Code of Arbitration Procedure. The motion was denied.

Prior to the hearing, Respondent filed a request to Amend their Counterclaim. The panel granted their request.

Prior to the hearing, the Claimants dismissed the individual Respondents Richard Kushnir, Joel Weiner, and Jack Cotto, as parties to the claim.

The parties have agreed that the Award in this matter may be executed by 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 pleadings, 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:

**Statement of Claim**

1. Respondent R.D. Kushnir & Company, Inc. shall be and hereby is liable for and shall pay to the claimants, Jerry Kopf and Ben Stevens, the amount of Thirty Thousand Dollars (\$30,000.00);

**Counterclaim**

2. Respondent's counterclaim is denied and dismissed in its entirety;

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated under Forum Fees below.

**FORUM FEES**

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

4 hearing sessions x \$750 = \$3000 plus one prehearing conference session at \$300 = \$3,300.

**Statement of Claim**

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by Claimants.

**Counterclaim**

The NASD shall also retain the nonrefundable filing fee for the counterclaim in the amount of \$500 and shall retain the hearing session deposit for the counterclaim in the amount of \$750.

Additional hearing session fees in the amount of \$1800 are due to the NASD. The panel has assessed \$900 against the Claimants, Jerry Kopf and Ben Stevens, jointly and severally, and \$900 against Respondent R.D. Kushnir.

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

**By The Arbitration Panel:**

Dated:

<u>5-20-94</u>	<u>s/s Kurt L. Schultz, Esq.</u> Kurt L. Schultz, Esq. Presiding, Industry Arbitrator
<u>5-19-94</u>	<u>s/s Morgan F. McDonnell</u> Morgan F. McDonnell Industry Arbitrator
<u>5-19-94</u>	<u>s/s Richard E. Ascher</u> Richard E. Ascher Industry Arbitrator

Date Award Served By The NASD: 5-20-94