

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Stephen A. Kohn
Chester J. Hebert

and

93-01245

Name of Respondents

U.S. Securities Clearing Corporation
A. James Miranti
Steven Scott Maxie
Jimmy Villalobos

REPRESENTATION OF PARTIES

Stephen A. Kohn and Chester J. Hebert ("Claimants") were represented by John Fogerty Winston, Esq., Englewood, Colorado.

U.S. Securities Clearing Corporation ("USSCC"), Steven Scott Maxie ("Maxie"), and Jimmy Villalobos ("Villalobos")(with Miranti, collectively as "Respondents") were represented by Darlene Rohr Kowalczyk, Esq. of Grady, Farley & Gerson, San Diego, California.

A. James Miranti ("Miranti") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about March 30, 1993. Claimant's Answer to Respondent's Counterclaims was filed on or about June 7, 1993. Submission Agreement of Claimant Steven A. Kohn was signed on March 26, 1993. Submission Agreement of Chester J. Hebert was signed on March 26, 1993.

Statement of Answer was filed by Respondents U.S. Securities Clearing Corporation, A. James Miranti, Steven Scott Maxie, and Jimmy Villalobos on or about May 27, 1993. Respondents' Cross Claim against Stephen A. Kohn and Chester Hebert was filed on or about May 27, 1993. Submission Agreement of Respondent U.S. Securities Clearing Corporation was signed on May 26, 1993 by A. James Miranti. Submission Agreement of A. James Miranti was signed on May 26, 1993. Submission Agreement of Jimmy Villalobos was signed on May 26, 1993. Submission Agreement of Steven Scott Maxie was signed on May 26, 1993.

HEARING INFORMATION

The hearing was held on Wednesday, October 27, 1993 for two (2) session; Thursday, October 28, 1993 for two (2) sessions; and Friday, October 29, 1993 for two (2) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimants alleged that Respondents engaged in fraud and deceit; interfered with the contractual relationship; engaged in bad faith denial of the existence of a contract; intentionally inflicted emotional distress; defamed them; and violated RICO. Specifically, Claimants alleged that Respondents refused to transfer accounts as requested; underpaid them or refused to pay the agreed to amount of 90% of trading profits in exchange for \$24,000.00 investment in the trading deck; concealed profits and provided them with false figures; and withholding funds for payment of registration fees. With respect to the allegation that Respondent Miranti intentionally inflicted emotional distress, Claimants specifically state that A. James Miranti threatened Stephen A. Kohn. With respect to the allegation that they were defamed, Claimants stated that Respondents amended their U-5 to reflect that the Claimants were under investigation and terminated for cause when in fact they voluntarily terminated their relationship with U.S. Securities Corp.

Respondents denied the allegations of wrongdoing. With respect to the transfer of accounts, Respondents stated that the accounts could not be transferred because the Claimants were not associated with a member of the N.A.S.D. Respondents further state that Claimants have failed to effectuate the transfer of accounts in accordance with the policies of U.S. Securities Clearing Corp. and securities industry regulations. With respect to the allegations concerning the underpayment of monies, Respondents stated that Claimants were paid all monies due under the agreement of the parties, denied that false figures were provided to Claimants and stated that they were provided records of all transactions and were paid accordingly. With respect to the issue of registration fees, Respondents stated that the Claimants did not notify U.S. Securities Clearing Corp. in the allotted time of their intentions with regard to registration in certain states and therefore were registered as they had been previously. Regarding the amendment of the U-5, Respondents stated that the amendment was made at the suggestion of the N.A.S.D. to reflect the investigation into allegations that Claimants had withheld certain books and records from U.S. Securities Clearing Corp.

RELIEF REQUESTED

Claimants requested an award in their favor and against the Respondents as follows: unspecified damages for loss of expected income from possession of accounts brought to USSCC and accounts acquired while associated with USSCC as well as loss of market value of accounts; damages of approximately \$1,990,961.50 which represents the Claimant's share of trading profits wrongfully withheld by the Respondents; unspecified damages from Respondents Miranti, Villalobos and Maxie for intentional interference with contractual relationship;

unspecified damages for loss of sales commissions on products traded by Claimants; unspecified damages resulting from the wrongful reassignment of Claimants' accounts; unspecified damages for emotional distress from Respondent Miranti to Claimant Kohn; unspecified damages for defamation from Respondent Miranti; punitive damages; treble damages pursuant to RICO; attorney's fees; expert witness fees; costs; interest; travel and lodging fees; and registration fees in the total amount of \$2,420.00.

Respondents requested that the Claimants take nothing by way of their claim; that they be awarded their reasonable attorney's fees and costs of defending this matter; and for such further relief as the arbitration panel deems appropriate. In their Cross Claim, Respondents requested an award against Claimants in the amount of \$19,151.46, plus interest; exemplary and punitive damages; costs including reasonable attorney's fees; and for such further relief as the arbitration panel deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the N.A.S.D.

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:

1. Respondent U.S. Securities Clearing Corp. is ordered to amend the U-4 and/or U-5 of Claimants Stephen A. Kohn and Chester Hebert to reflect that they voluntarily terminated their relationship with U.S. Securities Clearing Corp. and should not include language that reflects that the Claimants were terminated for cause and/or under investigation for fraud or wrongful taking of property.
2. Respondents U.S. Securities Clearing Corp. and A. James Miranti shall be and hereby are jointly and severally liable for and shall pay to the Claimant Stephen A. Kohn the sum of *Ten thousand dollars* (\$10,000.00).
3. Respondent U.S. Securities Clearing Corp. shall be and hereby is liable for and shall pay to the Claimants Stephen A. Kohn and Chester Hebert the sum of *Sixty thousand dollars* (\$60,000.00).
4. No interest is awarded on the above stated sums.

5. The claims asserted against Steven Scott Maxie and Jimmy Villalobos shall be and hereby are dismissed.
6. The counterclaim asserted in this matter shall be and hereby is dismissed in its entirety.
7. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §44(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 \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,500.00 previously deposited with the N.A.S.D. by the Claimants. The N.A.S.D. shall retain the non refundable filing fee in the amount of \$500.00 and shall retain the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. by the Respondents. Respondent U.S. Securities Clearing Corp. shall liable for and shall pay to the N.A.S.D. the sum of \$6,900.00 as forum fees.

Forum fees are calculated at the rate of \$1,500.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Cletus E. Byrne, Jr.
Cletus E. Byrne, Jr.
Industry Arbitrator, Presiding Chair

November 23, 1993

s/ James P. Beck, Esq.
James P. Beck, Esq.
Industry Arbitrator

November 19, 1993

s/ Dunn Krahl
Dunn Krahl
Industry Arbitrator

November 19, 1993