

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David Loggins

93-01972

Name of Respondents

Cohig & Associates,
Kober Financial Corp.,
Richard M. Gawlik,
Richard Rouse and
Charles Pankey a/k/a/ Charles V. Pankey

REPRESENTATION OF PARTIES

Claimant David Loggins ("Claimant") was represented at the hearing by Noel Guardi, Esq., Denver, Colorado.

Respondents Cohig & Associates ("Cohig") and Richard Rouse ("Rouse") were represented by David H. Drennen, Esq., Cohig & Associates, Englewood, Colorado.

Respondent Kober Financial Corp. ("Kober") failed to appear at the hearing.

Respondent Richard M. Gawlik ("Gawlik") was represented by Dennis A. Graham, Esq., Hopper & Kanouff, Denver, Colorado.

Respondent Charles Pankey ("Pankey") was represented by David J. Birk, Esq., Birk & Shock, Aurora, Colorado.

CASE INFORMATION

Statement of Claim was filed by Claimant on or about May 17, 1993. Submission Agreement signed by David Loggins on May 14, 1993.

Statement of Answer was filed by Respondent Cohig on October 28, 1993. Submission Agreement was signed by David H. Drennen, Esq. on behalf of Cohig on September 23, 1993.

Statement of Answer was filed by Respondent Kober on November 18, 1993. Respondent Kober did not execute a Submission Agreement.

Statement of Answer was filed by Respondent Gawlik on June 28, 1994. Respondent Gawlik did not execute a Submission Agreement.

Statement of Answer was filed by Respondent Rouse on November 4, 1993. Submission Agreement was signed by Respondent on September 23, 1993.

Statement of Answer was filed by Respondent Pankey on March 2, 1994. Submission Agreement was signed by Charles Pankey on March 2, 1994.

HEARING INFORMATION

The hearing was held on September 13, 1994 in Denver, Colorado for a total of one (1) hearing session.

CASE SUMMARY

Claimant David Loggins alleged that Respondents Kober and Pankey, breached their fiduciary duties, were negligent, and failed to deal fairly with Claimant in that Pankey failed to execute a sell order as requested by Claimant. Claimant further alleged that Pankey made a sale of securities: which were unsuitable; with intent to defraud; by means of false and misleading statements, and misrepresentations of fact; and while guaranteeing a profit on the investment. Additionally, Claimant alleged that Kober and Respondents Gawlik and Rouse were negligent in failing to supervise Respondent Pankey to assure compliance with applicable securities laws and regulations, and aided and abetted the fraud by knowingly or recklessly establishing Kober's supervision, markup and compliance policies.

Respondent Cohig in its Answer requested that the Claim be dismissed against it asserting that Cohig is not the successor in interest to Respondent Kober, that Claimant never had an account with Cohig, and that Respondents Pankey and Gawlik have never worked for Cohig. Furthermore, Respondent Cohig denied each and every substantive allegation contained in the Claim. Respondent Cohig set forth the following affirmative defenses in its Answer: failure to state a claim upon which relief may be granted; the Claimant's claims are barred by the doctrines of estoppel, laches, and ratification and waiver, and by the applicable statute of limitations; claimant was a knowledgeable investor who understood the risks inherent in the investments made by him, which risks he voluntarily assumed; any loss experienced by Claimant is the result of market conditions and/or Claimant's own conduct and not as a result of any action or alleged inaction on its part; and Claimant failed to mitigate his damages.

Respondent Kober in its Answer stated that it is no longer an operating entity, that it filed a Broker Dealer Withdrawal Form ("BDW"), and has no assets to cover legal expenses, forum fees, general creditors, or arbitration awards.

Respondent Gawlik in his Answer denied each and every substantive allegation contained in the Claim. Respondent Gawlik set forth the following affirmative defenses in his Answer: failure to state a claim upon which relief may be granted; lack of direct supervisory authority over Respondent Pankey; lack of knowledge of alleged wrongdoing by Respondent Pankey in the reasonable exercise of care; the claims are barred by the doctrines of waiver, estoppel, unclean hands, assumption of risk; the claims are barred by the applicable statute of limitations, and failure to mitigate.

Respondent Rouse in his Answer denied having a duty to supervise or power to direct or control the conduct of Respondents Pankey and Kober. Respondent Rouse also denied any direct or indirect knowledge, or that he aided and abetted the alleged fraud. Furthermore, Respondent Rouse denied each and every other substantive allegation contained in the Claim. Respondent Rouse set forth the following affirmative defenses in his Answer: failure to state a claim upon which relief may be granted; the claims are barred by the doctrines of estoppel, laches, ratification, and waiver; the claims are barred by the applicable statute of limitations; assumption of risk; any loss experienced by Claimant is the result of market conditions and/or Claimant's own conduct and not as a result of any action or alleged inaction on its part; and failure to mitigate.

Respondent Pankey in his Answer denied each and every substantive allegation contained in the Claim. Respondent Pankey set forth the following affirmative defenses in his Answer: the claims are barred by the applicable statute of limitations, failure to state a claim upon which relief may be granted; assumption of risk, market conditions, estoppel, laches, ratification, and waiver.

RELIEF REQUESTED

Claimant requested damages in an amount to be determined at hearing plus interest, reasonable attorney fees, and exemplary damages.

Respondents Cohig and Rouse requested that the Statement of Claim be denied and that they be awarded their costs.

Respondent Kober did not specifically state a relief, but asserted that it is a non-operating entity without any liquid assets.

Respondent Gawlik requested that the Statement of Claim be denied as to him and that he be awarded his costs and any further and just relief.

Respondent Pankey requested that the Statement of Claim be dismissed with prejudice and that he be awarded his costs and any further relief.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that Respondent Kober has been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Kober had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent Gawlik did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

Claimant Loggins entered into settlement agreements with Respondents Cohig, Gawlik, Rouse, and Pankey immediately prior to the hearing, whereby all claims are dismissed as to these Respondents.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original(s) 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:

1. Respondent Kober Financial Corp. shall be and hereby is liable for and shall pay claimant, David Loggins the sum of **One Thousand, Seven Hundred Twenty Five Dollars and No Cents. (\$1,725.00)**.
2. Interest at the rate of eight percent (8%) on the above stated sum from and inclusive of September 13, 1994 until such damages are paid in full.
3. Respondent Kober shall reimburse to the Claimant the sum of \$520.00 which was previously deposited by him with the NASD.
4. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.
5. Any relief not specifically provided for herein is denied.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$400 = \$400 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

Pursuant to §43(c) of the Code, the NASD shall retain the postponement fee in the amount of \$400 previously paid to the NASD by Respondent Pankey.

By The Arbitration Panel:

Dated:

September 30, 1994

/s/ James J. Cronin, Esq.
James J. Cronin, Esq., Presiding
Public Arbitrator

September 27, 1994

/s/ John L. Worcester
John L. Worcester
Public Arbitrator

September 29, 1994

/s/ Shelley A. Brandon
Shelley A. Brandon
Industry Arbitrator

Date Award Served By The NASD: 10/6/94