

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

DONALD B. BEARD and CELESTE D. BEARD

Claimants

v.

NASD No. 93-2817

KENNEDY, CABOT & CO., DAVID P. KANE
and GENE L. ROACH

Respondents

Representation

For Claimant: Donald Beard, Highland, CA

For Respondents Kennedy, Cabot & Co. and David P. Kane: George Kupper, Esq. of
Kennedy, Cabot & Co., Beverly Hills, CA

For Respondent Gene L. Roach: Gene L. Roach, Riverside, CA

Case Information

Statement of Claim filed: July 16, 1993

Claimant's Submission Agreement signed: July 14, 1993

Respondents Kennedy, Cabot & Co.'s and David P. Kane's Statement of Answer filed on:
September 8, 1993

Respondent Gene L. Roach, although duly served, did not file an Answer, or appear at the
hearing.

Respondent Kennedy Cabot & Co.'s Submission Agreement signed on: September 8, 1993
Respondent David P. Kane did not file a Submission Agreement but did file an Answer,
was represented at the hearing by counsel, and is subject to the jurisdiction of the
National Association of Securities Dealers (NASD) in accordance with Section 12 of

the NASD Code of Arbitration Procedure. Respondent Gene L. Roach, although duly served, did not file a Submission Agreement or an Answer and did not appear at the hearing. Mr. Roach is subject to the jurisdiction of the NASD in accordance with Section 12 of the NASD Code of Arbitration Procedure.

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: May 5, 1994/one

Hearing Location: Beverly Hills, CA

Case Summary

Claimant alleged:

Failure to render proper executions and confirmations regarding the sale of 15,000 shares of Southmark (SM) on October 19, 1987. Kennedy, Cabot & Co. (KCC) took a full day to discover the order was lost and three additional days to find it and determine it was never executed. The "KWHY (Ch. 22) reel" on October 19, 1987 was showing SM at 7 1/2 and 7 3/4 at 1:45-1:55 p.m. P.S.T. Even if the tape was running two hours late, that would place the 7 1/2 - 7 3/4 activity in the 11:30 - 12:00 noon P.S.T. period. Had the Claimants' order been properly handled, there is reason to believe that it was or should have been completed.

Because the October 19, 1987 sell order was deemed "lost" by Respondent KCC, Claimants were induced to enter a second order on October 20, 1987 for the remainder of their SM shares. KCC also treated the same block of shares as unsold and issued margin calls based upon the issue's decline in value. When Claimants cancelled their October 20, 1987 order on October 21, 1987 because they had arranged to meet their margin call, KCC failed to cancel the order and sold the stock in an admitted "foulup."

Respondents KCC and David P. Kane alleged:

Based upon Section 15 of the NASD Code of Arbitration Procedure and California CCP Section 337 (regarding the four year statute of limitations) this matter is barred from arbitration. Claimants opened their account with KCC in December 1981. During the stock market "crash" in October 1987 Claimants were dissatisfied with the sale of 15,000 shares of SM in their account.

In October of 1987 Claimants had complete knowledge of the facts giving rise to their alleged damages. KCC and David P. Kane (Kane) received Claimants' letter detailing the facts of the SM sale on November 12, 1987. The proper venue and law to apply is California

because Claimants and Kane are residents of California and KCC is a California corporation. Therefore, the applicable law regarding this statute of limitation should be that of the State of California. Under CCP Section 337 an action under contract must be filed within four years from the date of the occurrence which caused the alleged damages.

Respondent Gene L. Roach did not file an Answer

Relief Requested

Claimant requested compensatory damages of \$13,125.

Other Issues Considered and Decided

Respondents KCC and Kane made a request to adjourn the arbitration at the hearing which was denied by the panel. The hearing remained open until receipt of briefs from the parties regarding the applicable law with respect to the statute of limitation. At the hearing, both parties were given to and including May 19, 1994 to submit their briefs, which were received by the NASD and forwarded to the arbitrators. Respondents KCC's and Kane's post-hearing submission included a request for an "arbitration de novo" with a new panel of arbitrators, which is hereby denied by the arbitrators.

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. Respondents Kennedy, Cabot & Co. and David P. Kane are jointly and severally liable for and shall pay Claimants \$13,125;
2. All claims against Respondent Gene L. Roach are dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum

fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$400 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondents Kennedy, Cabot & Co. and David P. Kane, jointly and severally, for \$400,

calculated as follows: one hearing sessions at \$400/hearing session, equals \$400.

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

Arbitration Panel

Name

Public/Industry

Diana G. Davis, Esq.

Public

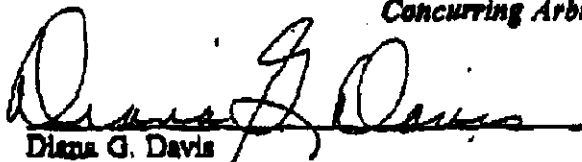
Brian F. Stokes, Esq.

Industry

Larry Edmonson

Public

Concurring Arbitrators' Signatures


Diana G. Davis

Brian F. Stokes

Larry Edmonson

Date of Decision: