

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Rick True

and

93-03986

Name of Respondent

Kober Financial Corp.

REPRESENTATION OF PARTIES

Rick True ("Claimant") was represented by Michael J. Turner, Esq., Branney, Hillyard and Portman, Denver, Colorado.

Kober Financial Corp. ("Respondent") was represented by Peter N. Bowinski, Kober Financial Corp., Englewood, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 1, 1993. Amended Statement of Claim was dated March 10, 1994. Submission Agreement of Claimant Rick True was signed on September 27, 1993.

Statement of Answer was filed by Respondent Kober Financial Corp. on or about November 29, 1993.

HEARING INFORMATION

The hearing was held on Friday, December 9, 1994 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that beginning in April, 1990, Sabrina Martinez began investing in unsuitable securities, including Premier Production, a limited partnership. It was alleged that Respondents made material misrepresentations to induce Claimant into purchasing the securities at issue.

Claimant also alleged that Respondents breached their fiduciary duty to him and that Kober Financial Corporation was negligent in supervising its brokers.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the Claimant represented himself to be a sophisticated and experienced investor, interested in speculative, high risk securities that would provide, if successful, a much higher rate of return. It was further stated that Ms. Martinez, and then Mr. Long, showed the Claimant investments that met his investment objectives and that Ms. Martinez took pains to involve both the Claimant and others in discussions about the merits and risks of investments prior to completing the transaction.

RELIEF REQUESTED

Claimant requested an award in the amount of \$190,554.82, which includes a claim of \$75,000 as damages for emotional distress, plus what other and further relief as the arbitrators deem just and fair.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the hearing of this matter, Claimant withdrew claims asserted against Cohig & Associates Inc., Charles Long, Dave Olson and Jim Robertson. All claims asserted against Sabrina Martinez were dismissed without prejudice as a result of an automatic stay under the Bankruptcy Code.

Respondent Kober Financial Corp. 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, appeared and offered testimony and documentary evidence at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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 to the Claimant Rick True the sum of **Ninety two thousand five hundred eighty dollars and fifty seven cents (\$92,580.57)** which sum shall be reduced by any amounts previously received from other previously named Respondents. This sum shall also be reduced by the amount of any disbursements to Claimant Rick True or any other individual from Kober account number 7828722. It is the obligation of Respondent Kober Financial Corp. to demonstrate any such disbursements to the Claimant prior to payment of this award. The total amount of such disbursements shall not exceed the total amount of deposits to account 7828722 attributable to Claimant Rick True.
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of June 11, 1991 to and inclusive of the date this award is paid in full.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 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 \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Rick True. Respondent Kober Financial Corp. shall be and hereby is liable for and shall pay to the NASD the sum of \$750 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Thaddeus J. Tecza, Ph.D.
Thaddeus J. Tecza, Ph.D.
Public Arbitrator, Presiding Chair

January 23, 1995

/s/ J.K. Glenn, Esq.
J. K. Glenn, Esq.
Public Arbitrator

January 17, 1995

/s/ Joseph M. Costello
Joseph M. Costello
Industry Arbitrator

January 16, 1995