

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

DEREK J. COWIE; and DEREK J. COWIE
TRUSTEE FBO COWIE TRUST U/A DTD
12/18/89,

Claimants,

v.

NASD No. 93-4352

KENNEDY, CABOT & CO. and
MARK O. FINK.

Respondents.

Representation

For Claimant (Cowie): Michael Huberman, Esq., Of Counsel for Greenbaum & Ferentz,
Newport Beach, California

For Respondent Kennedy Cabot & Co. (KCC): George Kupper, Esq. of Kennedy, Cabot &
Co., Beverly Hills, California

Case Information

Statement of Claim filed: October 28, 1993

Claimant's Submission Agreement signed: October 12, 1993

Statement of Answer filed on: KCC on February 22, 1994, Fink on February 14, 1994

Respondent KCC's Submission Agreement signed on: February 18, 1994

Respondent Mark Fink's Submission Agreement signed on: February 14, 1994

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: September 1, 1994/two, September 2, 1994/two

Hearing Location: Los Angeles, California

Case Summary

Claimant alleged:

Misrepresentations and omissions, negligent misrepresentation, breach of fiduciary duty, failure to supervise and unsuitability in the purchase of various securities, including Eastern Airline 13.750% debentures, Continental Airlines' 11.375% bonds, Ohio State Water Quality Municipal Bond, and EUA Power Corporation's 17.50% bonds. With the exception of the Ohio State Water bonds, all the other bonds recommended by respondent Marc Fink (Fink) went bankrupt, resulting in the default of those bonds.

Claimant left school at the age of fourteen and became an apprentice for a scientific instrument company in his homeland, Great Britain. He had attended the equivalent of a vocational school for three years and in 1956 emigrated to the United States. In October 1988, claimant was contacted by Fink who identified himself as a specialist in high income bonds and made the above-referenced recommendations for purchases of bonds. Cowie had explicitly stated to Fink that he was totally risk averse and that his capital was irreplaceable as it was for his retirement.

Respondent KCC alleged:

Claimants' own unsolicited trades show a history of trading in "penny" and below investment grade stocks. Mr. Cowie was a sophisticated investor who not only liked speculating, but did so to maximize his returns. Claimant was a knowledgeable and knew full well that the gain was proportional to the risk. Cowie had a net worth of over one million dollars with a liquid net worth of \$600,000 and annual income of \$140,000 as of October 30, 1993, per his Options Account Information Form.

Mr. Fink first did business with claimant on or about February 11, 1984, when he bought two New Zealand currency bonds. Cowie had been dealing with Fink for almost two years before his purchase of Eastern Airline debentures. When claimant bought the Ohio State Water bonds they were in default. Claimant had been employed in the airline industry and knew the yields of the bonds were proportional to the risk. World events and the economic recession also contributed to the drastic decline in the airline revenues and utilities.

Respondent Marc Fink alleged:

Claimant had a history of investing in high risk situations before Fink met him, and continues that investment strategy today. His relationship with Cowie began on January 28,

1987 when claimant called to speculate in foreign currencies. Fink advised Cowie to sell when the investments were not doing well, e.g., Eastern Airline bonds, but he chose to sell only part of his holdings. Cowie was a sophisticated investor who used large amounts of risks in seeking out his high rates of return. Fink was advised that Cowie had a separate retirement plan at work and investments placed with him were play money. Cowie represented his net worth as over one million dollars.

Relief Requested

Claimant requested:

1. Compensatory damages of \$64,000;
2. Lost profits to be determined;
3. Prejudgment and postjudgment interest at the highest legal rate;
4. Punitive damages in the amount of \$192,000;
5. Costs of suit;
6. Attorney's fees; and
7. Further relief as deemed proper.

Other Issues Considered and 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 originals remain on file with the NASD.

Claimant made a request, at the hearing, to amend his claim to add a party, which was denied by the panel.

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 Marc Fink are jointly and severally liable for and shall pay claimant the sum of \$8,000;
2. Each and every other claim, including the claim for punitive damages, is 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 retain the \$750 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimant for \$1,500, minus \$750 already paid as a hearing deposit, leaving a balance due of \$750, and

Respondent Kennedy, Cabot and Co. and Marc Fink, jointly and severally, for \$1,500, calculated as follows: four hearing sessions at \$750/hearing session, equals \$3,000, divided equally by claimant and respondents.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Douglas Stenzel	Public
George Fenimore	Public
Jeffrey Skogsbergh	Industry

Concurring Arbitrators' Signatures

Douglas Stenzel

George Fenimore

Jeffrey Skogsbergh

9/21/94

Date of Decision:

Other Costs

None.

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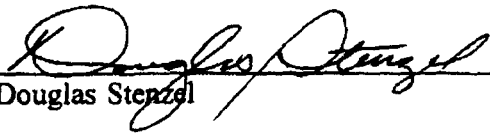
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George Fenimore	Public
Jeffrey Skogsbergh	Industry

Concurring Arbitrators' Signatures


Douglas Stenzel

George Fenimore

Jeffrey Skogsbergh

Date of Decision: *September 9, 1994*

9/21/94

Other Costs

None.

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