

PUBLIC

N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant(s)

Iris Solow

93-04386

Name of Respondent(s)

Cohig & Associates, Inc.  
Marc Canatella  
Kenneth M. DeVane  
Scott Elliot  
Kober Financial Corporation

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**REPRESENTATION**

For Claimant Iris Solow: Walter D'Ull, Esq., New York, NY.

For Respondents:

Cohig and Associates, Inc.: David H. Drennen, Esq., Englewood, CA.  
Marc Canatella and Scott Elliott appeared pro se via a telephone conference call.  
Kenneth M. DeVane: Nelson D. Blank, Esq., of the law firm of Trenam, Simmons, Kemker, Scharf, Barkin, Frye and O'Neill, Tampa, FL.  
The Respondent Kober Financial Corporation did not appear.

**CASE INFORMATION**

Statement of Claim filed: October 25, 1993.

Claimant's Submission Agreement signed on: October 15, 1993.

Statement of Answer filed by Respondent Cohig and Associates, Inc. on:  
December 2, 1993.

Respondent Cohig and Associates, Inc.'s Submission Agreement filed on:  
December 2, 1993.

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Statement of Answer filed by Respondent Kenneth M. DeVane on: December 23, 1993.

Respondent Kenneth M. DeVane's Submission Agreement filed on: December 14, 1993.

Statement of Answer filed by Respondent Scott Elliott on: January 13, 1994.

Respondent Scott Elliott's Submission Agreement filed on: January 13, 1994.

The Respondents Kober Financial Corporation and Marc Canatella did not sign Submission Agreements or submit Statements of Answer as required pursuant to Section 25 of the Code of Arbitration Procedure.

#### **HEARING INFORMATION**

Hearing Date/Sessions:     July 7, 1994 / Two Sessions  
                                     July 8, 1994 / One Session

Hearing Location:     NASD offices located in New York City, New York.

#### **CASE SUMMARY**

Claimant alleged that Respondents violated federal securities laws and other statutes and regulations governing the conduct of broker-dealers, stock exchange rules and Respondents engaged in common law fraud; unauthorized trading; misrepresentation; breached the fiduciary duty owed to Claimant; negligently handled Claimant's account and utilized high pressure "boiler room" telephone calls designed to place customers in a position where they were asked to make hasty and ill considered investment decisions regarding speculative securities. Claimant further alleged the Respondents Kober Financial Corporation and Scott Elliott failed in their duty to adequately supervise and monitor Marc Canatella and did aid, abet and encourage his acts. Claimant further alleged the Respondents recommended investments that were unsuitable for her.

Respondent Kenneth M. DeVane maintained he had limited authority over Marc Canatella and properly fulfilled his responsibilities at all times. Respondent Kenneth M. DeVane further maintained the following: the Statement of Claim fails to state a claim for relief and should be dismissed as against him; the claims are barred by the doctrines of estoppel, laches, ratification and waiver and the applicable statutes of limitations; Claimant was a knowledgeable investor who understood the risks inherent in the investments made by her, which risks she

voluntarily assumed; any losses sustained by Claimant were due to market conditions and/or Claimants' own conduct and she failed to mitigate her damages.

Respondent Scott Elliott denied the allegations made in the Statement of Claim and further maintained the following: Claimant's claim fails to state a claim upon which relief can be granted; Claimant's claim is barred by the doctrines of waiver, estoppel and unclean hands; Respondent Scott Elliott at all times acted in good faith and did not directly induce any acts which may constitute a violation of state or federal securities laws; Scott Elliott avers that Claimant was a knowledgeable and sophisticated investor who understood the risks inherent in the investments made by her, which risks she voluntarily assumed; the Claimant made investment decisions against the advice of Scott Elliott on many occasions, and, therefore, bears the responsibility for her own actions.

Respondent Cohig and Associates, Inc. maintained that it was named in the claim, apparently, solely because Claimant believes that it is the successor to Kober Financial Corporation and Cohig is not the successor to Kober Financial Corporation and Kober Financial Corporation did not merge with Respondent Cohig and Associates, Inc. Respondent Cohig and Associates, Inc. further denied the allegations contained in the Statement of Claim and maintained the following: the claims of Claimant are barred by the doctrines of estoppel, laches and ratification and waiver and the applicable statutes of limitations; Claimant was a knowledgeable investor who understood the risks inherent in the investments made by her, which risks she voluntarily assumed; any losses sustained by Claimant were due to market conditions and/or Claimant's own conduct and not as a result of any wrongful conduct on the part of Kober Financial Corporation or Cohig and Associates, Inc. and Claimant failed to mitigate her damages.

Respondent Marc Canatella denied all of the allegations contained in the Statement of Claim. Respondent Marc Canatella further maintained that he made full disclosure concerning all investments and any losses sustained by the Claimant were not due to any wrongdoing on the part of Marc Canatella. Respondent Marc Canatella further maintained the Claimant was a sophisticated investor who understood the risks inherent in the investments she made and he acted at all times in good faith and the Claimant should bear the responsibility for her investment decisions.

#### **RELIEF REQUEST**

Claimant requested damages from option transactions in the sum of \$10,386.00 plus damages for stock transactions in the sum of \$9,431.00 plus lost interest and dividend income; treble damages under RICO and attorneys' fees plus costs of this proceeding.

Respondent Kenneth M. DeVane requested that the claim against him be dismissed and that he be awarded reasonable costs, including attorneys' fees.

Respondent Scott Elliott requested that Claimant's claim be dismissed and that he be awarded reasonable costs, including attorneys' fees and other relief as the panel deems appropriate.

Respondent Cohig and Associates, Inc. requested that the claim be dismissed against it and that it be awarded its reasonable costs including attorneys' fees.

### **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. Prior to the commencement of the first hearing session the arbitration panel was informed that the Claimant had entered into a settlement agreement with Respondents Cohig and Associates, Inc. and Kenneth M. DeVane.
2. The arbitration panel determined that the Respondent Kober Financial Corporation did not receive due notice of the claim against it and dismissed without prejudice all claims against this Respondent.
3. The Respondent Marc Canatella be and hereby is liable and shall pay to the Claimant the sum of \$5,430.00 interest specifically excluded.
4. The Respondent Scott Elliott be and hereby is liable and shall pay to the Claimant the sum of \$3,620.00 interest specifically excluded.
5. The Claimant's request for RICO damages is denied.
6. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

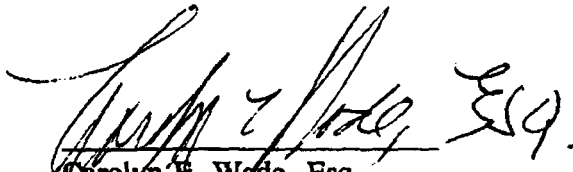
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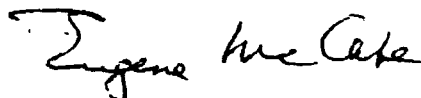
3 sessions x \$500.00 = \$1,500.00 less Claimant's \$500.00 hearing  
session deposit = net \$1,000.00 due.

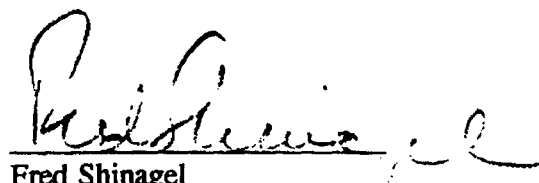
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$250.00 representing forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$750.00 representing forum fees.

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

**ARBITRATORS' SIGNATURE**

  
Carolyn E. Wade, Esq.  
Public Arbitrator

  
Eugene McCabe, Esq.  
Public Arbitrator

  
Fred Shinagel  
Industry Arbitrator

Date of Decision: August 31, 1994

Award #93-04386

STATE OF: *New York*

COUNTY OF: *KINGS*

SS:

On this *3<sup>rd</sup>* day of *August*, 1994, before me personally appeared Carolyn E. Wade, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Karl Warner*



KARL WARNER  
Commissioner of Deeds  
City of New York #3-6343  
Certificate Filed in Bronx County  
Commission Expires July 1, 1996

*Karl Warner*

STATE OF: *New Jersey*

COUNTY OF: *Monmouth*

SS:

On this *9<sup>th</sup>* day of *August*, 1994, before me personally appeared Eugene McCabe, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Anna Goclin*

ANNA GOCLIN  
Notary Public of New Jersey  
My Commission Expires July 19, 1999

STATE OF: *N. J.*

COUNTY OF: *N. J.*

SS:

On this *22* day of *August*, 1994, before me personally appeared Fred Shinagel known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Albert M. Weissman*

ALBERT M. WEISSMAN  
Notary Public of New York  
No. 51-4210200  
Commission Expires July 30, 1995

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