

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of Arbitration Between

Benjamin Kashkin, Andrew Klick  
and Mark Polios,  
Claimants,

vs.

Case # 93-04778

Robert Todd Financial Corp.,  
Respondents.

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**REPRESENTATION**

For Claimants, Benjamin Kashkin, Andrew Klick and Mark Polios, Morgan Bentley, Esq.,  
Newark, N.J.

The Respondent did not appear at the hearing.

**CASE INFORMATION**

Claimants' Joint Statement of Claim filed: November 15, 1993

Claimant, Mark Polios', Submission Agreement signed on: November 5, 1994

Claimant, Andrew Klick's, Submission Agreement signed on: November 5, 1994

Claimant, Benjamin Kashkin's, Submission Agreement signed on: November 5, 1994

Statement of Answer filed: January 27, 1994

Respondent's Submission Agreement signed on: January 26, 1994

### **HEARING INFORMATION**

Hearing dates/sessions: April 6, 1995

1 Session

The hearings were held at the offices of the National Association of Securities Dealer, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant, Benjamin Kashkin ("Mr. Kashkin"), alleged he resigned from Respondent, Robert Todd Financial Corp. ("Robert Todd"), in June of 1993 and that at the time of his resignation Robert Todd owed him, at least, \$7309.00 in commissions. Mr. Kashkin alleged that he received a check in the amount of \$8,556.28 which was stopped by Robert Todd and that despite repeated demands, he has not received payment from Robert Todd.

Claimant, Mark Polios ("Mr. Polios"), alleged that on July 29, 1993, he resigned from Robert Todd, and that at the time of resignation Robert Todd owed him commissions in excess of \$4575.00. Mr. Polios alleged that despite repeated demands, he has not received payment.

Mr. Polios also alleged that Robert Todd intentionally failed to file a timely Form U-5 which hindered transfer of his registration to his new employer and prevented Mr. Polios from soliciting former and prospective clients. Mr. Polios alleged that this action allowed Robert Todd employees to solicit and retain Mr. Polios' customers.

Furthermore, Mr. Polios alleged that the Form U-5 that Robert Todd filed on October 7, 1993, contained false and misleading information in that Robert Todd marked "yes" to question 15 on the Form U-5 although the alleged wrongful activity did not involve a customer problem, but a dispute between Robert Todd and Mr. Polios concerning customer holding pages. Mr. Polios alleged that the disclosures were intentionally made to damage Mr. Polios' business reputation among other broker/dealers and customers.

Finally, Mr. Kashkin, Mr. Polios and Claimant, Andrew Klick ("Mr. Klick"), alleged that after they resigned, employees of Robert Todd made disparaging and defamatory remarks concerning the Claimants to the Claimants' customers and former customers in order to keep these accounts at Robert Todd.

Robert Todd maintained that Mr. Kashkin, like all brokers at Robert Todd, received a 50% payout on all commissions earned, less expenses and disbursements, and that Mr. Kashkin received such payout for his first five months of employment - September, 1993, through January, 1993.

Robert Todd maintained that in February, 1993, when Mr. Kashkin brought Mr. Klick to Robert Todd, Mr. Klick negotiated a 90% payout for the first three months of his employment (February, March and April) and for a 50% payout thereafter. However, Robert Todd maintained that there was never an agreement to raise Mr. Kashkin's payout above 50%.

Futher, Robert Todd maintained that Mr. Klick and Mr. Kashkin, subsequently, combined their registered representative numbers to raise Mr. Kashkin's commission payout to 90%. Robert Todd maintained that, from February through April 1993, Mr. Kashkin received approximately \$13,590 in commissions based upon a 90% payout when he should have received approximately \$7,550.00 based on a 50% payout.

Robert Todd admits to stopping the check it issued to Mr. Kashkin representing May Commissions and maintained that the check represented 90% payout of May commissions while Mr. Kashkin was only entitled to 50% payout. Additionally, Robert Todd maintained that upon reviewing its records it calculated that, Mr. Kashkin's May commissions at 50% payout less expenses amount to \$4,037.37; Mr. Kashkin's February, March and April commissions at 50% payout less expenses amounted to \$7,550; Mr. Kashkin inadvertently received 90% payout for three months equal to \$13,590; and that, accordingly, Mr. Kashkin owes Robert Todd \$2,002.63.

Robert Todd maintained that when Mr. Polios left Robert Todd the commissions due to him for June and July, 1993, before deduction of expenses, amounted to \$ 1,137.00 and that after the deduction of expenses Mr. Polios owes and still owes Robert Todd \$1,911.75.

Robert Todd admits to inadvertently filing Mr. Polios Form U-5 late, however maintains that Mr. Polios fabricated the alleged harm done to him due to such late filing. Robert Todd maintains that Mr. Polios left Robert Todd without tendering a resignation, and as a result, Robert Todd's operation department did not timely learn of Mr. Polios' departure. In addition, Robert Todd maintained that every customer that Mr. Polios worked with at Robert Todd is and was a Robert Todd customer and that Mr. Polios did not bring any new customers with him to Robert Todd, accordingly, the late filing did not prevent Mr. Polios from soliciting customers.

Additionally, Robert Todd maintained that they completed Mr. Polios' Form U-5 believing its answers to be correct, subsequently, Robert Todd contacted the NASD to inquire whether the disclosure made was appropriate; when the NASD informed Robert Todd that the disclosure was inappropriate, Robert Todd amended Mr. Polios' Form U-5 and sent it to the NASD on September 29, 1993.

Lastly, Robert Todd denies its employees made disparaging or defamatory statements in relation to the Claimants.

**RELIEF REQUESTED**

Claimants, Mr. Kashkin and Mr. Polios, requested compensation due and owing in excess of \$12,000. Mr. Polios requested damages, in excess of \$25,000, caused by Respondents failure to timely file his Form U-5. Claimants also requested damages for the defamatory conduct of Respondent in the amount of \$50,000. In addition, Claimants requested punitive damages, attorney fees and costs.

Respondent requested that all claims be dismissed in their entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

- 1) 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.
- 2) The arbitration panel made the following rulings concerning Respondents, Robert Todd Financial Corp. who failed to appear at the evidentiary hearing conducted in this matter:
  - a. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
  - b. The panel found that the Respondent, Robert Todd Financial Corp., were members of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over the Respondent, Robert Todd Financial Corp., pursuant to Section 12 of the NASD Code of Arbitration Procedure.
  - c. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondents, Robert Todd Financial Corp., with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent, Robert Todd Financial Corp., whose absence was unexcused.
- 3) The panel granted Claimants' request to appear at the hearing via telephone.
- 4) The claim for defamation and requested damages asserted by the Claimants in their Statement of Claim were withdrawn by the Claimants at the hearing in this matter.

**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 be and hereby is liable and shall pay Claimant, Benjamin Kashkin, the sum of \$8,556.28 plus interest at the rate of 9% per annum from June 17, 1993, to date of payment.
2. Respondent is directed to revise Claimant, Mark Polios', Form U-5 as follows:
  - a) any disclosure concerning the dispute between Robert Todd and Mr. Polios is to be withdrawn.
3. Respondent shall pay to Claimants the sum of \$1100.00 as reimbursement for Hearing Session Fees and Filing Fees paid by the Claimant.
4. Claimant, Mark Polios', request for damages of \$25,000 is denied.
5. Claimants' request for punitive damages is denied.
6. Claimants' request for attorney's fees is denied.

**FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Filing Fee:	\$500.00	
Hearing Session:	\$600.00	1 Session x \$600.00

Respondents are assessed \$1100.00 which represents total forum fees due, less \$1100.00 paid to Claimant, leaving \$0.00 due.

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

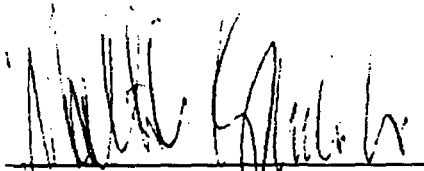
NASD Case No. 93-04778  
Arbitrator Signature Page

**ARBITRATION PANEL**

Vicki Z. Holleman, Esq	-	Industry Chairperson
Walter A. Kapuscinski	-	Industry Arbitrator
Paul E. Barr	-	Industry Arbitrator

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Vicki Z. Holleman, Esq.



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Walter A. Kapuscinski

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Paul E. Barr

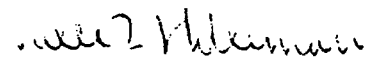
Date of decision: *June 13, 1995*

NASD Case No. 93-04778

Arbitrator Signature Page

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Vicki Z. Holleman, Esq	-	Industry Chairperson
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Vicki Z. Holleman, Esq.

Walter A. Kapuscinski

Paul E. Barr

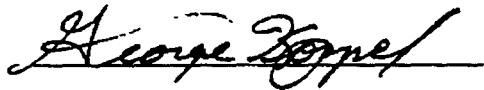
Date of decision:

STATE OF: *New York*

SS:

COUNTY OF: *KINGS*

On this *7th* day of *June*, 1995, before me personally appeared **Vicki Z. Holleman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "George Koppel", written over a horizontal line.

**GEORGE KOPPEL**  
Notary Public, State of New York  
No. 24-4691583  
Qualified in Kings County  
Commission Expires January 31, 1996

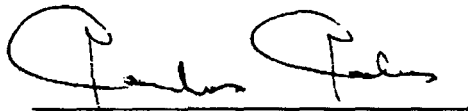


STATE OF: New York

COUNTY OF: Richmond

SS:

On this 8<sup>th</sup> day of June, 1995, before me personally appeared **Walter A. Kapuscinski** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



A handwritten signature in cursive script, appearing to read 'Carlos Cobos', written over a horizontal line.

**CARLOS COBOS**  
Notary Public, State of New York  
No. 43-4870888  
Qualified in Richmond County  
Commission Expires August 13, 1996

NASD Case No. 93-04778  
Arbitrator Signature Page

**ARBITRATION PANEL**

Vicki Z. Holleman, Esq	-	Industry Chairperson
Walter A. Kapuscinski	-	Industry Arbitrator
Paul E. Barr	-	Industry Arbitrator

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Vicki Z. Holleman, Esq.

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Walter A. Kapuscinski



Paul E. Barr

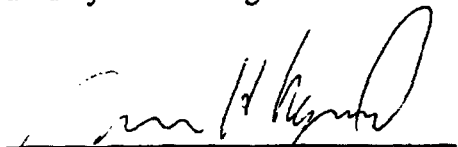
Date of decision: *June 13, 1993*

STATE OF: *N. J.*

COUNTY OF: *ESSEX*

SS:

On this *8* day of *June*, 1995, before me personally appeared **Paul E. Barr** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 30, 1996