

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Orvis and Shirley Adams, TTEES/Adams Family Trust

v.

NASD Arbitration
No. 93-04802

Name of Respondents

Kennedy, Cabot & Company, Marc O. Fink and
Pieter De Vries

REPRESENTATION

For Claimants: Michael Huberman, Esq., Greenbaum & Ferentz
Newport Beach, California

For Respondents Kennedy, Cabot & Co. and Peter De Vries:

George H. Kupper, Esq., Kennedy, Cabot & Co.,
Beverly Hills, California

For Respondent Marc O. Fink:

Pro Se,
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: November 11, 1993

Joint Statement of Answer filed by Respondents: April 7, 1994

Claimants' Submission Agreement signed: November 2, 1993

Respondent Kennedy, Cabot & Co.'s Submission Agreement signed: March 14, 1994

Respondent Peter De Vries' Submission Agreement signed: March 14, 1994

Respondent Marc O. Fink's Submission Agreement signed: April 15, 1994

HEARING INFORMATION

Pre-Hearing Telephone Conference: February 22, 1995 (1 session)

Hearing Dates / Sessions: March 7, 1995 (2 sessions)
March 8, 1995 (2 sessions)
March 24, 1995 (2 sessions)
March 25, 1995 (2 sessions)
March 27, 1995 (2 sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants Orvis E. Adams, individually and as Trustee on behalf of the Adams Family Trust, claimed that Respondents' conduct constituted constructive fraud under California Civil Code Section 1573, and that Respondents' conduct constituted negligent misrepresentations and breach of fiduciary duty. In addition, Claimants alleged that Kennedy, Cabot & Company failed to properly supervise its broker representative. Finally, Claimants alleged that investments selected for the Claimants were unsuitable.

Respondents alleged that Orvis E. Adams was a sophisticated speculative investor and that Respondents are not liable for Claimants' own volitional acts.

RELIEF REQUESTED

Claimants sought \$92,655.91 plus loss profits, pre-judgement and post-judgement interest, and punitive damages in the amount of \$277,967.73.

Respondents requested that all of Claimants' claims be dismissed and that no costs, attorney's fees or forum fees be imposed.

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 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. All claims by Claimants, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by Claimants. Forum fees are to be split between Claimants and Respondents, and are calculated as follows:

1 pre-hearing session @ \$300/session	-	\$ 300.00
10 hearing sessions @ \$750/session	-	<u>7,500.00</u>
Total fees assessed:	-	\$ 7,800.00
Claimants' share (50%)	-	\$ 3,900.00
Credit for hearing deposit	-	<u>750.00</u>
Balance due	-	\$ 3,150.00
Respondents' share (50%)	-	\$ 3,900.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Gerald A. Koris	Public Arbitrator
Trude C. Taylor	Public Arbitrator
Leo M. Klein	Industry Arbitrator

Concurring Arbitrators' Signatures

Gerald A. Koris

Trude C. Taylor



Leo M. Klein

Date Served: 4/19/95

Concurring Arbitrators' Signatures

Gerald A. Koris


Trude C. Taylor

Trude C. Taylor

Leo M. Klein

Date Served: 4/19/95

Concurring Arbitrators' Signatures



Gerald A. Koris

Trude C. Taylor

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Date Served: 4/19/95