

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

GKN Securities Corp.,

94-00029

Name of Respondent

Anthony V. Cincotta, Jr.

REPRESENTATION

For Claimant GKN Securities Corp.: Katherine Nathan, Esq. of GKN Securities Corp.

Respondent Anthony Cincotta, Jr. did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed on: January 3, 1994

Claimant's Submission Agreement signed on: January 3, 1994

Respondent did not file an answer or sign a submission agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing dates/sessions:

July 27, 1995

One 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 alleged that Respondent commenced employment as a registered representative at Claimant's firm on or about February 16, 1993. Claimant further alleged that on or about February 17, 1993, it entered into a letter agreement (the "Agreement") with Respondent.

Claimant alleged that pursuant to the Agreement, it advanced \$5,000 to Respondent evidenced by a promissory note executed by Respondent dated February 17, 1993. Claimant further alleged that it advanced an additional \$5,000 to Respondent evidenced by a promissory note executed by Respondent dated March 19, 1993. Claimant also alleged that Respondent incurred expenses of \$1,825.53 for which he was obligated to repay to Claimant.

Claimant alleged that also pursuant to the Agreement, Respondent agreed to repay the difference between Respondent's commission and the firm's standard commission payout should Respondent terminate his employment with Claimant prior to February 17, 1993. Claimant further alleged that the difference amounted to \$705.75.

Claimant alleged that Respondent's employment with Claimant terminated on or about June 15, 1993. Claimant further alleged that Respondent had failed to repay the \$10,000 advances, the \$705.75 commission differential and the \$1,825.53 in expenses.

Respondent did not submit an answer in response to the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award of \$12,531.29 plus interest; costs of these proceedings; attorneys' fees; and, all additional relief as the arbitrator may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator made the following rulings concerning Respondent, Anthony V. Cincotta, Jr., who failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure (the "Code"), the arbitrator found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that at the time the controversy arose, Claimant was a member of the NASD and, Respondent was a registered representative employed by Claimant. Consequently, the arbitrator found personal jurisdiction over the Claimant and Respondent, pursuant to Section 8 of the NASD Code of Arbitration Procedure.

3. In view of the (2) above, the arbitrator found that Respondent was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Sections 11 and 25(b) of the Code. In this regard, the arbitrator found that the Statement of Claim was properly served upon the Respondent pursuant to Section 11 and 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the Code, the arbitrator found that the NASD provided Respondent with "due notice" of the hearing conducted in this matter by regular, certified mail and Federal Express. The arbitrator, therefore, determined to proceed with the hearing without Respondent, whose absence was unexcused.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has 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 the sum of \$10,705.00 plus interest at the rate of 9% per annum from June 15, 1993 to date of payment of the award.
2. Respondent shall pay to Claimant the sum of \$300.00 as reimbursement for Hearing Session Fees paid by the Claimant.
3. All other requests for relief are denied.

FORUM FEES

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

July 27, 1995: 1 Session x \$300 = \$300.00

1. Respondent is assessed \$300.00 which represents total forum fees due, less \$300.00 paid, leaving \$0.00 due.

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

ARBITRATOR'S SIGNATURE

Therese M. Obringer

Therese M. Obringer, Esq.
Industry Chairperson

N.A.S.D. Date of decision: September 27, 1995

I, Therese M. Obringer, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Therese M. Obringer

Therese M. Obringer, Esq.