

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Wayne W. and Lillian A. Clark

94-00226

Name of Respondent(s)

GKN Securities Corporation
Robert D. Tucker
Lawrence Principato
Andrew Gasparro

REPRESENTATION

For Claimants, Wayne and Lillian Clark ("the Clarks"): Russell L. Forkey, Esq. of Dumar, Curtis, Cross, Laystrom & Perloff, P.A., Miami, FL.

For Respondents, GKN Securities Corp. ("GKN") and Andrew Gasparro ("Gasparro"): Katherine Nathan, Esq., of GKN, New York City, N.Y.

For Respondent, Robert D. Tucker ("Tucker"): David E. Robbins, Esq., of Kaufmann, Feiner, Yamin, et al., New York, N.Y.

For Respondent, Lawrence Principato ("Principato"): Jeffery Schwartz, Esq., of L.T. Lawrence & Co. Inc., New York, N.Y.

CASE INFORMATION

Statement of Claim filed on January 20, 1994 and Amended Statement of Claim filed on July 19, 1994. Claimant's Submission Agreement signed on: October 4, 1993.

Statement of Answer filed by Respondents, GKN and Gasparro on: May 3, 1994. Answer to Amended Claim filed on: September 13, 1994. Respondent, GKN's Submission Agreement signed on: May 3, 1994 by Robert Gladstone on behalf of GKN.

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Statement of Answer filed by Respondent, Tucker, on: May 4, 1994. Respondent, Tucker's Submission Agreement signed on April 29, 1994.

Respondent, Principato failed to file a Statement of Answer of sign a Submission Agreement as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure ("the Code") (see "Other Issues").

HEARING INFORMATION

On April 4, 5 and 6, and May 21 and 22, 1995 hearings lasting ten (10) sessions were conducted in Tampa Florida.

CASE SUMMARY

Claimants, alleged that Respondents were liable for negligence, fraud and deceit, breach of fiduciary duties, breach of contract, market manipulation, and negligent supervision, as it related to the corporate respondent. Claimants alleged that Tucker and GKN placed unsuitable securities in their accounts and further, made unauthorized trades in their accounts.

Respondents denied all allegations of wrongdoing and alleged that: prior to each purchase and sale in the Claimants' account, the transactions were fully discussed with a representative of GKN and, in most instances, information was mailed to the Claimants to make sure they were fully aware of the continuing prices of the stocks. Further, that at no time during the period that the trading took place in the account, from May to December 1992, did the Claimants complain that a trade was unauthorized or unsuitable.

RELIEF REQUESTED

Claimants requested damages in the amount of not less than \$60,000.00, which includes \$35,000.00 in compensatory damages and \$25,000.00 in punitive damages plus interest, costs, attorney's fees and such other relief as the panel deems appropriate.

Respondents, GKN and Gasparro, requested dismissal of the claim plus costs and attorneys fees.

Respondent, Tucker, requested dismissal of the claim plus cost and attorneys fees

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the Code. The panel finds that Principato

was required to sign a Submission Agreement and to file a Statement of Answer pursuant to Sections 12 and 25 of the Code, Principato being an associated person with an NASD member firm at the time the facts giving rise to the controversy occurred.

2. Prior to the beginning of the hearing in this matter, Claimants dismissed, with prejudice, the action against Respondents, Gasparro and Principato. The parties have therefore requested, and the arbitrators have ordered, that this claim be expunged from the CRD records of Respondents, Gasparro and Principato.

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, GKN and Tucker, are found not liable and, therefore, all the claims against them are hereby dismissed.

OTHER COSTS

1. GKN is hereby found liable for one half of Respondent, Tucker's attorney's fees and shall pay to Respondent, Tucker the amount of \$9,077.50.

2. The parties are otherwise required to bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$7,500.00 (ten (10) sessions x \$750.00 per session).

1. Claimants are hereby assessed \$3,750. for which the NASD shall retain the \$750.00 hearing session deposit previously paid by Claimants, in partial satisfaction thereof, leaving a balance due to the NASD of \$3,000.00.

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2. Respondent, GKN is hereby assessed \$3,750.00 payable to the NASD.
3. The NASD shall retain the \$200.00 nonrefundable filing fee previously paid by Claimants.

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

Concurring Arbitrators' Signatures

Public/Industry

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John P. Cullem Esq.

Public/Chairperson

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Lewis W. Slaughter

Industry

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Alfred R. Priest

Public

Date of Decision: 8-3-95