

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**Dean Witter Reynolds Inc.**

**Hearing Location:** National Association of Securities Dealers offices located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that during 1993 and thereafter that Claimant was a market maker in Kamost Funding Corp. ("KAFU") which was traded over-the-counter. Claimant also alleged that, on September 24, 1993, Respondent purchased from Claimant 6,000 shares of KAFU, at a price of \$4.00 per share. Claimant further alleged that when Claimant attempted delivery of the 6,000 KAFU shares, Respondent disclaimed the trade and asserted that it had in fact sold 6,000 shares of KAFU to Claimant on September 24, 1993 at a price of \$4.00 per share.

Respondent maintained that on September 24, 1993 Respondent sold 6,000 shares of KAFU to Claimant at a price of \$4.00 per share. Respondent further maintained that it disclaimed a purchase of 6,000 shares of KAFU at \$4.00 but that the disclaimed 6,000 shares were part of a delivery to Respondent of 22,000 shares of KAFU on October 15, 1993 which also included 16,000 shares of KAFU that Respondent had purchased from Claimant on September 23, 1993. Respondent maintained that it rejected the full delivery of 22,000 shares of KAFU since it did not match Respondent's records and that subsequently 16,000 shares of KAFU were redelivered to, and accepted by, Respondent. Respondent then maintained that on October 26, 1993 it attempted to deliver 5,000 of the 6,000 shares of KAFU it had sold to Claimant but that Claimant rejected the delivery and disclaimed the entire purchase of 6,000 shares. Respondent maintained as an affirmative defense that Claimant was estopped from denying its purchase of KAFU based upon two documents; Respondent's confirmation to Claimant describing the sale of 6,000 KAFU shares to Claimant, and the Recaps Open Advisory Report sent to Respondent by National Securities Clearing Corporation which indicated that Respondent sold 6,000 KAFU shares to Claimant.

**RELIEF REQUESTED**

Claimant requested:

1. A declaration that on September 24, 1993 Claimant sold to Respondent 6000 shares of KAFU at \$4.00 per share and that Respondent accept delivery of same.
2. A declaration that the alleged sale to Claimant of 6000 shares of KAFU at \$4.00 per share on September 24, 1993 is null and void.
3. Interest, costs and disbursements.

Respondent requested:

1. Claimant's request for declaratory relief be denied in its entirety.
2. The sale of 6,000 shares of KAFU to Claimant at \$4.00 per share be reaffirmed by the arbitrator.

### **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. Claimant's claim is dismissed.
2. Each party shall bear its respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$300 = \$1,200 due.

Forum fees Assessed Against:

1. Claimant is assessed the sum of \$600 which represents one-half of the total forum fees due, less \$300 hearing session deposit paid by Claimant leaving \$300 due. Claimant is liable and shall pay to the NASD the sum of \$300.
2. Respondent is assessed the sum of \$600 which represents one-half of the total forum fees due. Respondent is liable and shall pay to the NASD the sum of \$600.

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

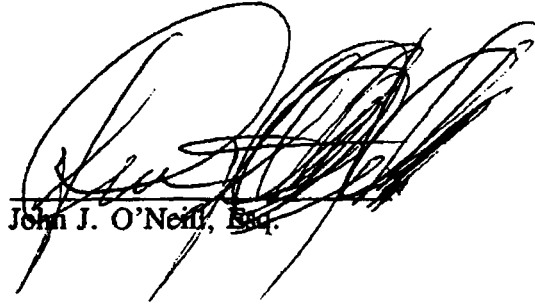
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Arbitrator's Signature

Name

Industry Chairperson



John J. O'Neill, Esq.

Date of Decision: December 5, 1994

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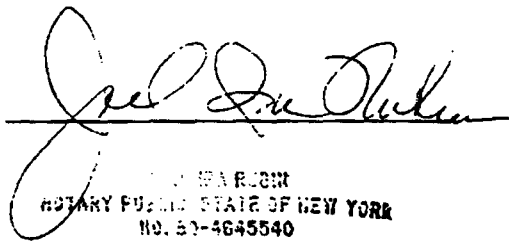
NASD Award #94-00489

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NASSAU*

On this *14* day of *December*, 1994, before me personally appeared John J. O'Neill, 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.

  
JOHN J. O'NEILL  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 60-4645540  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES ~~MAR-30-96~~  
*11/30/95*