

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Salvatore R. Cerruto

94-00749

Name of Respondent

GKN Securities Corporation

REPRESENTATION

For Claimant, Salvatore R. Cerruto ("Claimant"), appeared Nicholas K. Notias Esq., Of Counsel to Rosenberg, Singer & Bienenstock located in New York, New York.

For Respondent, GKN Securities Corporation ("Respondent"), appeared David S. Smith, Esq., from the law firm of Smith Campbell & Paduano located in New York, New York.

CASE INFORMATION

Statement of Claim filed: February 28, 1994.

Claimant's Submission Agreement signed on: February 21, 1994.

Statement of Answer and Counterclaim filed: May 18, 1994.

Respondent's Submission Agreement signed on: May 18, 1994.

Claimant's Reply to Counterclaim filed: June 21, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	October 17, 1994	-	Two Sessions
	October 18, 1994	-	Two Sessions
	December 1, 1994	-	Two Sessions
	January 25, 1995	-	Two Sessions

of a non-GKN security in the house account. Respondent further maintained that these securities were sold at a loss to Respondent of \$21,886.50. Respondent also alleged that Claimant was trading large blocks of GKN securities at another firm through an account in his daughter's name, which was in violation of securities regulations and firm policy. In addition, Respondent alleged that several checks amounting to \$155,445.20 were forged by Respondent's Chief Financial Officer and endorsed and deposited by Claimant.

In reply to the counterclaim, Claimant denied Respondent's allegations entirely. Claimant maintained that he was not instructed to refrain from establishing new positions in the house account and that he purchased the 45,500 shares with Respondent's approval. Claimant further denied Respondent's allegation that non-GKN securities were never permitted to be placed in the house account.

Claimant maintained that Respondent never questioned Claimant about the alleged forged checks nor did it advise Claimant that the signatures were forged. Claimant maintained that he received the checks as a holder in due course and, therefore, was not liable to Respondent because Respondent ratified the payment of these checks and was estopped from bringing a claim with respect to them. In addition, Claimant maintained that Respondent's claim is barred by the statute of limitations.

RELIEF REQUESTED

Claimant requested that the panel award him damages in the amount of \$1,133,248.93, representing the unpaid balance of his earnings of \$906,599.14 and liquidated damages of \$226,649.79, pursuant to Section 198(1-a) of the New York State Labor Law. In addition, Claimant requested interest, costs and attorney's fees. Claimant further requested that the counterclaim be dismissed in its entirety.

Respondent requested that the Statement of Claim be dismissed in its entirety. For its counterclaim, Respondent requested \$177,331.70, reasonable attorney's fees and that all costs of the arbitration be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent advised the panel that it was withdrawing its counterclaim based upon the misappropriation of checks.

At the hearing on January 31, 1995, Respondent's attorney objected to statements Chairperson Holleman made while advising the parties of a ruling. Respondent's attorney stated that he believed that the Chairperson's statements constituted argumentative statements concerning the probative value of the evidence offered. Chairperson Holleman offered to recuse herself if Respondent's attorney requested that she do so. Claimant's attorney objected to the Chairperson

January 26, 1995	-	One Session
January 31, 1995	-	Two Sessions
March 10, 1995	-	One Session

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

CASE SUMMARY

Claimant alleged that on November 20, 1990, he entered into an employment contract with Respondent, pursuant to which he was hired to trade his own account and Respondent's firm account. Claimant further alleged that, pursuant to the contract, he was to receive seventy percent of the gross profits on his own account and thirty percent of the gross profits on the firm's account. In addition, Claimant alleged that he was responsible for any losses in his account and that Respondent was responsible for any losses in the firm's account.

Claimant alleged that the total wages he earned during the full duration of his employment with Respondent was \$1,172,699.80, but that Respondent only paid him \$266,100.66. Claimant also alleged that Respondent continuously advised him that it was having cash flow problems and that it needed the funds Claimant generated to pay its own expenses. Claimant further alleged that Respondent made repeated assurances that he would be fully compensated at a later date. Claimant alleged that, on March 1, 1992, Respondent terminated his employment without notice in violation of the employment contract and that Respondent has not paid him.

Respondent denied that Claimant was entitled to thirty percent of the profits from Respondent's house account. Respondent maintained that, at the time Claimant was hired, Respondent did not make a market in any securities and, therefore, did not have a house account. Respondent further maintained that it opened an account in the firm's name in January, 1991 and, at that time, Claimant was not involved in the trading of that account.

Respondent maintained that, during 1991, the trader who was responsible for trading the house account became overwhelmed with the volume in the account and, therefore, Claimant occasionally assisted him. Respondent further maintained that there was an oral agreement between that trader and Claimant whereby Claimant was compensated from that trader's percentage share, but that Respondent never agreed to pay Claimant for activity related to the house account. Respondent also maintained that at a later date it was orally agreed that Claimant would receive a straight salary of \$5,000.00 per month for assisting with the house account.

For its counterclaim, Respondent alleged that no non-GKN securities were allowed to be placed in the house account, but that Claimant placed 45,500 shares

recusing herself. Respondent's attorney represented that he was unable to consult with a corporate representative and requested that the hearing be adjourned to a later date. The panel considered this request and denied it. Chairperson Holleman affirmatively stated that she was not biased, that she did not believe that anything she said was prejudicial and she did not recuse herself. The other members of the panel stated that they concurred with the Chairperson's ruling and that they were not biased.

At the next hearing session on March 13, 1995, Respondent's attorney stated that he consulted with his client and that he would like the Chairperson to recuse herself. The panel considered this request and the Chairperson stated that she would not recuse herself as she was not biased and did not believe that she made any prejudicial statements. The hearings were concluded after that session with the full panel presiding.

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.

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 to Claimant the sum of \$75,075.19, representing commissions due to Claimant for account number 6207, plus interest of 9% per annum from February 21, 1992 until payment of the award.
2. Claimant's request for liquidated damages is denied.
3. All claims asserted against Claimant be and hereby are denied.
4. Each party shall bear their respective costs, including attorney's fees, except that Respondent is liable and shall pay to Claimant the sum of \$1,500.00, representing the fees previously paid by Claimant to the NASD.
5. All other claims be and hereby are denied.

FORUM FEES

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

filing fee:	\$ 500.00
12 sessions x \$1,000.00:	<u>\$12,000.00</u>
Total:	\$12,500.00

Respondent be and hereby is liable for the sum of \$12,500.00 representing the total forum fees assessed. Respondent shall pay to the NASD the sum of \$11,000.00 representing the outstanding forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES



Vicki Z. Holleman, Esq.
Industry Chairperson

C. Anthony Bell
Industry Arbitrator

Frank G. Piazza
Industry Arbitrator

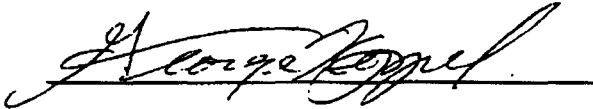
Date of Decision: April 28, 1995

STATE OF: *NEW YORK*

COUNTY OF: *KINGS*

SS:

On this 27 day *APRIL*, 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 be duly acknowledged to me that he executed the same.



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

STATE OF:

COUNTY OF:

On this day , 1995, before me personally appeared C. Anthony Bell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF:

SS:

On this day , 1995, before me personally appeared Frank G. Piazza known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

filing fee:	\$ 500.00
12 sessions x \$1,000.00:	<u>\$12,000.00</u>
Total:	\$12,500.00

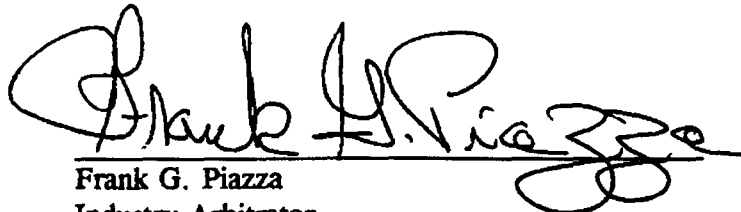
Respondent be and hereby is liable for the sum of \$12,500.00 representing the total forum fees assessed. Respondent shall pay to the NASD the sum of \$11,000.00 representing the outstanding forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

Vicki Z. Holleman, Esq.
Industry Chairperson

C. Anthony Bell
Industry Arbitrator



Frank G. Piazza
Industry Arbitrator

Date of Decision: April 28, 1995

STATE OF:

COUNTY OF:

ss:

On this day , 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 be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF:

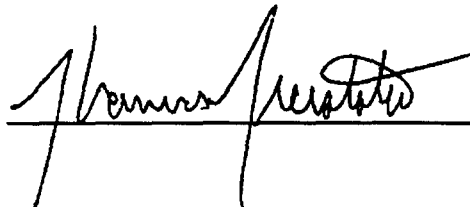
ss:

On this day , 1995, before me personally appeared C. Anthony Bell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *New Jersey*

COUNTY OF: *Bergen* ss:

On this *26* day *April* , 1995, before me personally appeared Frank G. Piazza known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



THOMAS K. TREPOTOLA
Notary Public, New Jersey
My Commission Expires June 23, 1999

filing fee:	\$ 500.00
12 sessions x \$1,000.00:	<u>\$12,000.00</u>
Total:	\$12,500.00

Respondent be and hereby is liable for the sum of \$12,500.00 representing the total forum fees assessed. Respondent shall pay to the NASD the sum of \$11,000.00 representing the outstanding forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

Vicki Z. Holleman, Esq.
Industry Chairperson

C. A. Bell

C. Anthony Bell
Industry Arbitrator

Frank G. Piazza
Industry Arbitrator

Date of Decision: April 28, 1995

STATE OF:

COUNTY OF:

ss:

On this day , 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 be duly acknowledged to me that he executed the same.

STATE OF: NY

COUNTY OF: NY

ss:

On this 5th day May, 1995, before me personally appeared C. Anthony Bell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah A. Jones

STATE OF:

COUNTY OF:

ss:

Notary Public, State of New York
No. 02061022679
Qualified in New York County 96
Commission Expires January 24, 1996

On this day , 1995, before me personally appeared Frank G. Piazza known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.