

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

GKN Securities Corp.

95-00508

Name of Respondent

John P. Nichols

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1995, Claimant GKN Securities Corp. ("Claimant"), through its representative and in-house counsel, Katherine Nathan, Esq., alleged that Respondent John P. Nichols ("Respondent") on March 17, 1994, commenced employment as a registered representative of Claimant and signed a Uniform Application for Securities Industry Registration or Transfer "U-4", providing that Respondent arbitrate "any dispute, claim or controversy that may arise between Respondent and firm." Claimant further alleged that or about March 21, 1994 Respondent entered into Association Agreement with Claimant, providing that Respondent arbitrate disputes between himself and Claimant at NASD facilities, and that Respondent repay Claimant for certain expenses and indemnify Claimant for unsecured customer debits. Claimant contended that as of July 29, 1994, when Respondent voluntarily resigned, he owed Claimant \$75.00 for expenses and/or unsecured customer debits, and a total of \$5,028.00 for 3 promissory notes signed by Respondent on April 15, 1994 for 2,000.00, May 16, 1994 for 2,000.00, and June 15, 1994 for \$1,028.00. Claimant further contended that as of July 29, 1994, Respondent had not repaid Claimant \$4,632.92 of the total amount owed from promissory notes, netting a total owed to Claimant of \$4,707.92. Claimant alleged that as a result of the above, it has suffered a loss for which the Respondent should be held liable.

Respondent John P. Nichols, who appeared Pro Se, maintained that the Association Agreement referenced stipulates that any arbitration between himself and Claimant be done at NASD facilities. Respondent further maintained that he denies the expenses and/or unsecured customer debits that allegedly resulted in a \$75.00 debit at the time of his termination. Respondent contended that the referenced "promissory notes" were in fact draws against Respondent's earnings and not loans to be repaid to Claimant. Respondent further contended that he denies having received any written demands for payment from Claimant, and denies that Claimant is entitled to any money. Respondent maintained that Claimant is estopped from recovery due to material misrepresentations made to Respondent, and that Claimant constantly harassed and intimidated Respondent (in violation of Fair Labor Standards) during his employment by Claimant. Respondent further maintained that the referenced Association Agreement is a violation of Florida public policy in that the repayment clause represents a contract of adhesion or a direct restraint of trade, and is not supported by consideration. Respondent contended that said Agreement represents an unethical attempt by Claimant to create forced labor by allowing Claimant to

fire an employee or create unproductive working atmosphere to effect departure. Respondent further contended that said Agreement violates Florida Statute 542.33 in that its enforcement entails a restraint of Respondent from exercising his right to engage in any lawful trade, profession or business. Respondent maintained that as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimant GKN Securities Corp., requested \$4,707.92 in actual damages plus interest, costs, and attorney's fees.

Respondent John P. Nichols, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

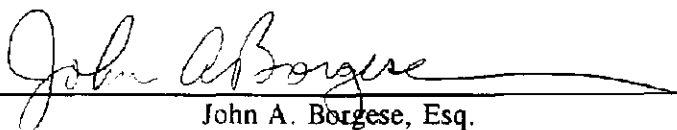
Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, John A. Borgese, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant GKN Securities Corp., on January 11, 1995, and by the Respondent John P. Nichols, on April 24, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent John P. Nichols, is liable and shall pay to the Claimant GKN Securities Corp., \$4,707.92, in actual damages.
2. The parties shall bear their respective costs.
3. The \$675.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant GKN Securities Corp., shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **JOHN A. BORGESE, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


John A. Borgese, Esq.

DATE OF DECISION: February 9, 1996