

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant

Fred Amsel

v.

NASD Arbitration  
No. 95-01767

Name of Respondent

Kennedy, Cabot & Co.

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**REPRESENTATION**

For Claimant: Fred Amsel, In Pro Per

For Respondent: George Kupper, Kennedy, Cabot & Co.,  
Beverly Hills, California

**CASE INFORMATION**

Statement of Claim filed: April 10, 1995

Claimant's Submission Agreement signed: April 5, 1995

Statement of Answer filed by former Respondents Peter D'Vries and Marie O'Mahoney (adopted as Answer for Respondent Kennedy, Cabot & Co.: June 30, 1995

Respondent's Kennedy, Cabot & Co.'s Submission Agreement signed: October 19, 1995

**HEARING INFORMATION**

Hearing Date / Session: October 18, 1995 (1 session)

Hearing Location: Los Angeles, California

**CASE SUMMARY**

Claimant alleged that a trade involving Dove Audio, Inc. was completed and confirmed but was then rescinded, causing a loss.

Respondent Kennedy, Cabot & Co. ("Respondent") alleged that Claimant sought 1,000 shares of Dove Audio, Inc. Respondent further alleged that only 200 shares were available to Respondent. Respondent further alleged that Claimant's order was taken "subject to availability".

Respondent alleged that a confirmation was erroneously sent to Claimant which indicated that Claimant had purchased 1,000 shares instead of 200 shares. Respondent denied that the error caused any damage to Claimant.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$3,2000.00 and punitive damages of \$1,800.00.

Respondent requested that all claims for damages and costs be dismissed with prejudice.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that a handwritten, signed Award may be entered.

At the request of George Kupper, Executive Vice President and Counsel for Kennedy, Cabot & Co., and with the consent of Claimant, Kennedy, Cabot & Co. became the Respondent in this matter. Kennedy, Cabot & Co. adopted the Answer and Motion to Dismiss filed by the former Respondents. The Claimants withdrew all claims against (former) Respondents Peter D'Vries and Marie O'Mahoney.

Upon consideration of the oral and written arguments, the Respondent's Motion to Dismiss was denied.

#### **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. All Claims against the Respondent are denied.
2. The Parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

One hearing session @ \$100.00/session =	\$100.00
Claimant's one-half share =	\$ 50.00
Credit for hearing session deposit =	\$100.00
Refund due Claimant from the NASD =	\$ 50.00
Respondent's one-half share =	\$ 50.00
Respondent's balance due =	\$ 50.00

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

### ARBITRATOR

<u>Name</u>	<u>Public / Industry</u>
Wayne E. Gallop, Esq.	Public Arbitrator

Arbitrator's Signature

  
Wayne E. Gallop, Esq.

Date of Decision: November 29, 1995