

9903002

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Jeffrey R. Knakal

vs.

Case No.
95-03 168

Name of Resoondent

Daiwa *Securities* America, Inc.
Daiwa Securities Company, Ltd

REPRESENTATION

For Claimant Jeffrey R. Knakal ("Claimant") appeared Jeffrey L. Liddle, Esq., of the firm Liddle & Robinson, located in New York, New York.

For Respondent Daiwa Securities America, Inc. ("Daiwa America") appeared Mark S. Dichter, Esq., of the firm Morgan, Lewis & Bockius, LLP, located in Philadelphia, Pennsylvania.

Respondent Daiwa Securities Company, Ltd. ("Daiwa Tokyo") did not enter an appearance in this matter. See "Other Issues Considered & Decided" portion of this decision.

CASE INFORMATION

Claimant's Statement of Claim was filed on June 28, 1995
Claimant's Submission Agreement was signed on June 28, 1995

Respondent Daiwa America's Statement of Answer was filed on August 30, 1995.
Respondent Daiwa America's Submission Agreement was signed on August 30, 1995.
Respondent Daiwa America's Amended Statement of Answer was filed on February 28, 1996.

Respondent Daiwa Securities Company Ltd. did not file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Preliminary Hearing: August 15, 1997

1 session

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Hearing Dates/Sessions:	May 6, 1998	1 session
	May 7, 1998	2 sessions
	December 16, 1998	2 sessions
	December 17, 1998	1 session
	February 9, 1999	2 sessions
	February 11, 1999	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleges that in 1985, he joined Daiwa America as Vice-President in its Corporate Finance Department, responsible for developing business for Daiwa within U.S. corporations on a worldwide basis. Claimant alleges that he developed a relationship with Aetna Life & Casualty ("Aetna") that eventually led to a business transaction called "Jumbo Alpha", which consisted of a series of tranches that raised money through a unit trust composed of U.S. mortgage-related securities sold in yen to Japanese investors. Claimant contends that between mid-1986 through June of 1990, he performed a variety of responsibilities, overcoming numerous obstacles created by Daiwa America and Daiwa Tokyo (collectively "Daiwa"), and led the Jumbo Alpha transaction to a successful completion. Claimant maintained that the Jumbo Alpha transaction raised approximately \$1.2 billion for the unit trust and received Nikkei Kinyu award, Japanese business community's highest award in the securities industry as "The Deal of the Year", in 1990.

Claimant asserts that in March of 1991, he wrote a memorandum to Ichiro Abe ("Abe"), Executive Vice President of Daiwa America, in which he noted that his contributions to the Jumbo Alpha transaction generated extraordinary revenues for Daiwa America and warranted a bonus equal to his contributions. Claimant alleges that Abe denied refused to pay him a bonus for that transaction, stating that the fees belonged to Daiwa Tokyo. Claimant further alleges that Daiwa America had performed a favor for Aetna and Aetna owed Daiwa America a reciprocal favor. Abe also said that Claimant would receive a bonus upon obtaining this business. Claimant maintains that in April of 1992, he actively encouraged Aetna by actively encouraging Aetna to purchase shares in Daiwa America's Japan Equity Fund. Claimant asserts that despite the oral agreement, Abe claimed that Claimant was not due any special commission and threatened to remove the Aetna account from Claimant. Claimant states he eventually received \$18,000 commission check without any explanation but that he was demoted when Daiwa America reorganized effective October 1992, which was in retaliation for Claimant's attempts to be compensated.

Respondent Daiwa America maintains that Claimant was not the originator, nor was he involved in the negotiations, the drafting of the primarily Japanese transaction documents, the structuring of the underlying portfolio, and the marketing of the Jumbo Alpha fund to Japanese investors.

Daiwa America further maintains that, while Claimant did serve a **useful** role as liaison between representatives of Daiwa Tokyo, the firm which Aetna hired to create and market the Jumbo Alpha fund, Claimant made little substantive contribution to the negotiations that occurred between Daiwa Tokyo and Aetna. Daiwa America contends that, although Claimant had contact with Aetna in his investment banking capacity, Daiwa America never received any investment banking revenues from Aetna as a result of Claimant's efforts in connection with Jumbo Alpha or otherwise. Daiwa America asserts that Claimant was compensated for his services related to Aetna's involvement in the Jumbo Alpha transaction by way of a salary and a **\$10,000.00** discretionary bonus he received for fiscal year 1990. Daiwa America also asserts that Claimant was never promised any retroactive compensation for Jumbo Alpha or additional compensation for the Japan Equity Fund. Daiwa America asserts that, since Claimant has no legitimate claim to additional bonus compensation arising out of Daiwa America's discretionary bonus program, Claimant is not entitled to any liquidated damages.

RELIEF REQUESTED

Claimant requests his 1990 bonus compensation for the Jumbo alpha transaction of not less than \$3.3 million. Claimant also requests liquidated damages in an amount equal to 25% of his bonus, a constructive trust placed upon monies received by Daiwa Tokyo from the Jumbo Alpha transaction, and attorney's fees, costs, and interest at 9% per annum.

Respondent Daiwa America requests that Claimant receive no relief from these proceedings and that his claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains on file with NASD Regulation, Inc.

In submissions dated October 13, 1995 and November 27, 1996, Daiwa Tokyo wrote that it was not a member of NASD and did not submit to this proceeding.

On March 22, 1996, the parties tiled a joint agreement to proceed under Rule 10334 of the Code of Arbitration Procedure ("Code").

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:

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1. The Statement of Claim is dismissed; and,
2. All other requests for relief are denied,

OTHER COSTS

Pursuant to Rule 10333 of the *Code*, Daiwa America has paid NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the *Code*, Claimant is assessed a \$1,000.00 postponement fee for the postponement of the hearings previously set to start on May 20, 1998.

Daiwa America is liable and has paid \$70.00 in costs for the duplication of awards

FORUM FEES

Pursuant to Rule 10205(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

1 Preliminary Hearing x \$1,500.00	=	\$ 1,500.00
10 Hearing Sessions x \$1,500.00	=	<u>\$15,000.00</u>
Total Forum Fees	=	\$16,500.00

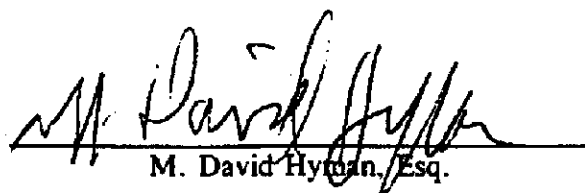
1. Claimant is liable and shall pay the sum of \$8,250.00, representing one-half of the total amount of forum fees. Claimant previously deposited \$1,300.00 with NASD Regulation, Inc. and owes and shall remit the balance of \$6,950.00 to NASD Regulation, Inc.
2. Daiwa America is liable and shall pay the sum of \$8,250.00, representing one-half of the total amount of forum fees. Respondent previously deposited \$5,400.00 with NASD Regulation, Inc. and owes and shall remit the balance of \$2,850.00 to NASD Regulation, Inc.

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ARBITRATION PANEL

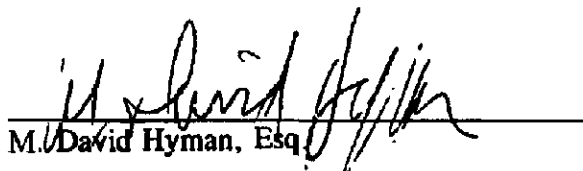
M. David Hyman, Esq.	-	Industry Chairperson
Mark D. Quinn, Esq.		Industry Arbitrator
Nancy Plessner Wendell	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


M. David Hyman, Esq.

Date of decision: March 12, 1999

I, M. David Hyman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


M. David Hyman, Esq.

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ARBITRATION PANEL

M. David Hyman, Esq.	-	Industry Chairperson
Mark D. Quinn, Esq.	-	Industry Arbitrator
Nancy Plessner Wendell	.	Industry Arbitrator

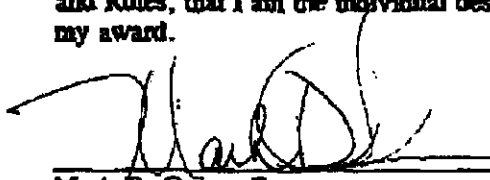
CONCURRING ARBITRATOR'S SIGNATURE



Mark D. Quinn, Esq.

Date of decision: March 12, 1999

I, Mark D. Quinn, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



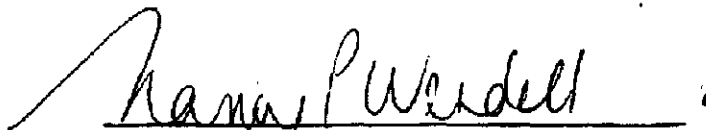
Mark D. Quinn, Esq.

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ARBITRATION PANEL

M. David Hyman, Esq.	-	Industry Chairperson
Mark D. Quinn, Esq.	-	Industry Arbitrator
Nancy Plesser Wendell	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Nancy Plesser Wendell

Date of decision: March 12, 1999

I, Nancy Plesser Wendell, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Nancy Plesser Wendell