

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Thomas J. Dwyer

95-03317

Name of Respondent

Cohig & Associates, Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on July 11, 1995, Claimant Thomas J. Dwyer ("Claimant"), who appeared Pro Se, alleged that Respondent Cohig & Associates, Inc. f/k/a Kober Financial Corp. ("Respondent"), caused him to purchase 4000 shares of Seahawk at .2953 on June 13, 1990, and 5000 shares at .59 on July 19, 1990, to his detriment. Claimant further alleged that Respondent breached its fiduciary duty to Claimant by specific actions undertaken by Respondent to first inflate and then deflate the share price at Seahawk Deep Ocean Tech., Inc ("Seahawk"). Claimant contended Respondent, as market maker in Seahawk, had knowledge of, but did not disclose, information regarding detrimental management compensation plans at Seahawk. Claimant further contended that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent Cohig & Associates, Inc., through its representative and in-house counsel, Russell K. Bean, Esq., maintained that all contested transactions occurred with Kober Financial Corp. ("KFC"), before Claimant transferred his account to Respondent. Respondent further maintained that it is the successor in interest to KFC, but is not liable for KFC's obligation, nor did Respondent assume any of KFC's business activities. Respondent contended that Claimant clearly does not claim that the Agreement defining the successor relationship and attendant obligations between KFC and Respondent is fraudulent. Respondent further contended that as a result of the above, it should not be held liable.

**RELIEF REQUESTED**

Claimant Thomas J. Dwyer, requested \$4,000.00 in actual damages plus 2,000.00 in punitive damages.

Respondent Cohig & Associates, Inc., requested that the claims of the Claimant be dismissed in their entirety.

**AWARD**

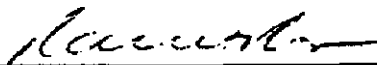
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert N. Rapp, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Thomas J. Dwyer, on July 3, 1995, and by the Respondent Cohig & Associates, Inc., on August 18, 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. After having reviewed and considered all documentation submitted by the parties concerning Respondent Cohig & Associates, Inc.'s Motion to Dismiss, the arbitrator granted the Motion, as Cohig & Associates Inc. is not a successor to the asserted liabilities of Kober Financial Corp.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Thomas J. Dwyer, shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **ROBERT N. RAPP, 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.

  
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Signature of Arbitrator

DATE OF DECISION: January 15, 1996