

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

GKN Securities Corp.

95-03404

Name of Respondents

Scott Kliewe
Robert Gladstone
Mario Figueroa
Gene Kingman

REPRESENTATION

For Claimant GKN Securities Corp. ("Claimant") appeared David S. Smith, Esq., of the law office Smith Campbell and Paduano located in New York, New York.

Respondent Scott Kliewe appeared pro se.

For Third-Party Respondent Robert Gladstone ("Gladstone") appeared David S. Smith, Esq., of the law office Smith Campbell and Paduano located in New York, New York.

For Third-Party Respondent Mario Figueroa ("Figueroa") appeared David S. Smith, Esq., of the law office Smith Campbell and Paduano located in New York, New York.

For Third-Party Respondent Gene Kingman ("Kingman") appeared David S. Smith, Esq., of the law office Smith Campbell and Paduano located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on July 12, 1995.

Claimant's Submission Agreement was signed on July 12, 1995.

Claimant's Statement of Answer to the Counterclaim and Third Party Claim was filed on June 17, 1996.

Statement of Answer by Respondent Kliewe was filed on September 13, 1995.

Respondent Kliewe's Submission Agreement was signed on September 11, 1995.

Statement of Answer to Third-Party Claims was filed on June 17, 1996.

Respondent Gladstone's Submission Agreement was signed on November 29, 1995.

Respondent Figueroa's Submission Agreement was signed on October 31, 1995.

Respondent Kingman's Submission Agreement was signed on October 31, 1995.

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HEARING INFORMATION

Hearing Date/Sessions:

July 8, 1997

Two Sessions

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

CASE SUMMARY

Claimant stated that on or about November 28, 1994, Respondent Kliewe entered into employment with them. Claimant stated that on or about December 14, 1994, Respondent Kliewe received an advance of and signed a promissory note for \$125,000.00. Claimant maintained that pursuant to the terms of the note the full amount became due if Respondent Kliewe's employment ended for any reason prior to December 13, 1997. Claimant stated that Respondent Kliewe's employment with them ended on or about June 01, 1995. Claimant alleged that despite their demands Respondent Kliewe has not repaid the note.

Respondent Kliewe maintained that his employment was unjustly terminated, since he had a work related illness and had taken leave under the Americans with Disabilities Act ("ADA"). Respondent Kliewe maintained that since he was unjustly terminated Claimant cannot collect payment on the note. Respondent Kliewe maintained that Claimant withheld his commission check while he was out of work. Respondent Kliewe alleged that Claimant terminated his employment, violating their obligation under ADA laws to accommodate work related illness, in order to make the note come due.

Respondent Kliewe alleged that third party Respondents Gladstone, Figueroa, and Kingman made slanderous and defamatory remarks about him and the circumstances of his absence, and due to this he has lost his clients and cannot return to work in the securities industry. Respondent Kliewe alleged that Respondent Figueroa acted with malice and disregard for the truth about his disability. Respondent Kliewe alleged that Respondents took his clients in order to generate commissions for themselves.

Claimant maintained that at all times they abided by the laws of the ADA. Claimant maintained that they had the right to withhold Respondent Kliewe's commission check under the terms of the note which stated that wages could be garnished to offset the debt. Claimant maintained that Respondent Kliewe was vague in stating when or if he was going to return to work, therefore again, they had a right to withhold the commission. Claimant maintained that they accommodated Respondent Kliewe in that they gave him medical leave when his position offered none, held his position open, and continued his registration, which they were not obligated to do, until his tentative return date, June 01, 1995. Claimant maintained that after this date Respondent Kliewe would not give a date when he could return to work, therefore, his employment was ended in accordance with NASD Rule 1785(a) which states that a broker/dealer is prohibited from maintaining the registration of a representative when that representative is no longer active or functioning as registered representative for the firm. Claimant maintained that Respondent Kliewe was told that when he was able to work re-employment would be considered. Claimant again stated that pursuant to the terms of the note the amount became payable if for any reason Respondent Kliewe's employment was ended.

Claimant maintained that third party respondents acted at all times within GKN policies as well as NASD policies. Claimant maintained that third party respondents told Respondent Kliewe's customers that while he was on leave they would handle the accounts, and that when and if, Respondent Kliewe returned to work they had the option of returning their accounts to him.

RELIEF REQUESTED

Claimant requested an award of \$110,039.98, together with interest, the costs of these proceedings, attorney's fees, any other such relief that the panel deems just and proper.

Claimant requested that the Counterclaim be dismissed in its entirety.

Respondent Kliewe requested an award against Claimant and Respondents Gladstone, Figueroa, and Kingman in an amount no less than \$1,000,000.00, punitive damages no less than \$3,000,000.00, attorney fees, statutory interest accruing from the date of Kliewe's dismissal and any other relief that the panel deems just and proper. Respondent Kliewe requested that Respondent Figueroa individually be liable for all damages allowable in the State of New York resulting from his slanderous utterances, including punitive damages.

Respondents Gladstone, Figueroa and Kingman requested that the Third Party Claims be dismissed in their entirety and that all additional fees and costs be assessed against Respondent Kliewe.

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 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 Kliewe is hereby liable and shall pay to Claimant the sum of \$110,039.88 with interest from the date of the award at the legal rate.
2. Each party shall bear the cost of their own attorney's fees.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have decided that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee and the \$350.00 member surcharge previously paid by the Claimant as well as the \$500.00 non-refundable filing fee paid by Respondent Kliewe, and have assessed the following Forum Fees:

2 Sessions	x	\$1,000.00	=	\$2,000.00
Total Forum Fees			=	\$2,000.00

1. Claimant is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing one-half the total forum fees assessed. Claimant previously deposited \$500.00 with NASD Regulation, Inc., therefore, Claimant is hereby liable and shall pay the sum of \$500.00.
2. Respondent Kliewe is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing one-half of the total forum fees assessed. Respondent Kliewe previously deposited \$1,000.00 with NASD Regulation, Inc, therefore, no payment is required of Respondent Kliewe.

Fees are payable to the NASD Regulation, Inc.

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ARBITRATORS' SIGNATURES

John J. O'Neill, Esq.
Industry Arbitrator - Chairperson

I, John J. O'Neill, 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.

John J. O'Neill, Esq.

Clifford A. Harwick
Industry Arbitrator

I, Clifford A. Harwick, 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.

Clifford A. Harwick


Derek Zimmerman
Industry Arbitrator

I, Derek Zimmerman, 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.

Derek Zimmerman

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ARBITRATORS' SIGNATURES



John J. O'Neill, Esq.
Industry Arbitrator - Chairperson

I, John J. O'Neill, 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.



John J. O'Neill, Esq.

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Industry Arbitrator

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Clifford A. Harwick

Derek Zimmerman
Industry Arbitrator

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Derek Zimmerman

Date of Decision: October 13, 1997

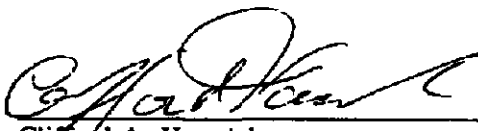
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ARBITRATORS' SIGNATURES

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Industry Arbitrator - Chairperson

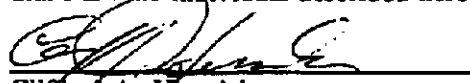
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