

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

GKN Securities Corp.

95-03426

Name of Respondent

April Robin Kidan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 17, 1995, Claimant GKN Securities Corp. ("Claimant"), through its representative and in-house counsel, Katherine Nathan, Esq., alleged that Respondent April Robin Kidan ("Respondent"), failed to repay monies owed Claimant by Respondent resulting from customer debits and certain commission overpayments, as mutually agreed to in their Association Agreement and Increased Payout Agreement. Claimant further alleged that Respondent commenced employment as a registered representative with Claimant on or about April 11, 1994 and terminated her employment on or about January 23, 1995. Claimant contended that Respondent has failed to repay the amount despite its demands and that as a result of the above, it suffered a loss for which the Respondent should be held liable.

Respondent April Robin Kidan, through its representative and in-house counsel, Robert F. Milman, Esq., of Milman & Heidecker, located in Lake Success, NY, maintained that per the exact verbiage contained in said Increased Payout Agreement Standard, she is not liable for the commission payout above Payout Grid since she was never terminated, but rather voluntarily resigned. Respondent contended that as a result of the above she should not be held liable.

Respondent alleged in an accompanying Counterclaim that Claimant unjustly withheld Respondent's January 1995 net commissions of \$883.65. Respondent further contended that under Section 191 of the New York State Labor Laws, she is entitled to double damages, attorneys' fees, plus court costs for such non-payment of wages. Respondent further maintained as a result of the above, she has suffered a loss for which the Claimant should be held liable.

RELIEF REQUESTED

Claimant GKN Securities Corp., requested \$3,489.60 in actual damages, plus attorneys' fees and court costs.

Respondent April Robin Kidan, requested that the claims of the Claimant be dismissed in her entirety. Respondent April Robin Kidan, filed a Counterclaim requesting \$1,765.30 in actual damages plus attorney's fees and costs.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Philip C. Loomis, CFA, 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 July 6, 1995, and by the Respondent April Robin Kidan, on September 21, 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. The claims of the Claimant GKN Securities, Corp., against Respondent April Robin Kidan, are denied in their entirety.
2. The Claimant GKN Securities Corp., is liable for shall pay the Respondent April Robin Kidan, \$1,765.30 in actual damages.
3. The Claimant GKN Securities Corp., is liable for shall pay the Respondent April Robin Kidan, \$2,500.00 in attorney's fees pursuant to the New York State Labor Law Section 191(c).
4. The \$575.00 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.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Respondent April Robin Kidan, for the Counterclaim shall be retained by the NASD, Inc. GKN Securities Corp., is liable and shall pay Respondent April Robin Kidan, \$575.00 as reimbursement of the filing fee.

AFFIRMATION

I, **PHILIP C. LOOMIS, CFA**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Signature of Arbitrator

DATE OF DECISION: January 12, 1996