

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Ervin D. Kemnitz, and
Carol M. Kemnitz,
Claimants,

v.

No. 95-03713

Simmons & Bishop Co., Inc., and
K. Mark Skow,
Respondents.

REPRESENTATION OF PARTIES

Ervin D. Kemnitz and Carol M. Kemnitz ("Claimants") appeared on their own behalf.

Simmons & Bishop Co., Inc. ("SBC") and K. Mark Skow ("Skow") (collectively referred to as "Respondents") were represented by Jeanne M. Rowzee, Esq., Irvine, California. Skow did not personally appear at the hearing.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about July 31, 1995. Claimants' Submission Agreement was signed on July 27, 1995.

Skow's Statement of Answer was filed on or about September 25, 1995. Skow's Submission Agreement was signed on September 25, 1995.

SBC's Submission Agreement was signed on January 18, 1996. SBC failed to file a Statement of Answer. However, at the hearing held on April 25, 1996, SBC orally adopted the Statement of Answer filed by Skow.

HEARING INFORMATION

The hearing was held on April 25, 1996 in Scottsdale, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that: On May 21, 1993, they entrusted \$50,000 to Skow of SBC with the intention of investing in secure stocks to reap a possible profit; and their account was abused by excessive trading, which they were not aware of until statements and confirmations were mailed to them. The dispute arose out of transactions in Management Technologies, Inc. ("MTI") stock.

Skow denied the allegations set forth in the Statement of Claim. Skow specifically stated that: Since he inherited Claimants' account in 1988, only small cap speculative stocks have been traded; the Claimants' short term trading reduced profits, and was not the cause of the decrease in account value; the reason for the five month long increase in short term trading activity was the character of the OTC market at the time; if the Claimants' were unhappy with the frequency of trading, they had ample time to notify Respondents of their displeasure; all confirms were sent immediately to the correct address and monthly statements were sent every month; commissions on the very short term trades were done at extremely low rates; 1994 was not a good year for growth stocks; MTI management was predicting, as late as August of 1994, \$.20 per share earnings for year ending April 1995; MTI officers made misstatements to shareholders; and the Claimants misstated the decrease in value of their account by not mentioning cash withdrawals of over \$13,000.

RELIEF REQUESTED

Claimant requested an award in the amount of \$50,000.00 against the Respondents.

Skow requested that the claims asserted be denied.

OTHER ISSUES CONSIDERED & DECIDED

On or about April 23, 1996, Respondents filed a Motion to Exclude from the arbitration all documents not exchanged and witnesses not identified by the Claimants, as well as, a Motion to Compel production of documents and to continue arbitration hearing. The motions and oral argument from the parties were taken up by the panel at the beginning of the hearing. After deliberation, the arbitrators denied the request to continue the hearing, denied the Motion to Exclude, and granted the Motion to Compel as to Claimants' tax returns from 1993 through 1995.

On April 25, 1996, SBC orally adopted Skow's Statement of Answer on the record. Further, Skow did not physically appear at the hearing. However, his counsel represented that Skow had notice of the hearing and that counsel was present at the hearing representing Skow.

Respondent SBC did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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

Respondent Skow is liable for, and shall pay to the Claimants the sum of \$15,000 as satisfaction of Claimants' claims against Skow.

Respondent SBC is liable for, and shall pay to Claimants the sum of \$7,500 as satisfaction of Claimants' claims against SBC.

Except as set forth more fully below, each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$120 and shall **refund** the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimants.

Pursuant to §45 of the Code, Respondent SBC is liable for, and shall pay to the NASD a member surcharge fee in the amount of \$200.

Additional forum fees in the amount of \$400 are assessed against Respondent Skow.

Additional forum fees in the amount of \$400 are assessed against Respondent SBC.

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

Dated:

George N. Roy
George N. Roy
Public Arbitrator, Presiding Chair

/s/

May 14, 1996

Oliver Ross
Oliver Ross, Ph.D.
Public Arbitrator

/s/

June 3, 1996

Ronald K. Sprague
Ronald K. Sprague
Industry Arbitrator

/s/

May 31, 1996