

## **AWARD**

### **NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

*In the Matter of the Arbitration Between*

**Name of Claimant**

Sheldon B. Liebovich

96-00938

**Name of Respondents**

GKN Securities Corp.;  
Dean L. Julia

### **REPRESENTATION**

For Claimant: Sheldon B. Liebovich ("Liebovich") was represented by Steven M. Lirtzman, Esq. of Rockford, Illinois.

For Respondent: GKN Securities Corporation ("GKN") was represented by Katherine Nathan, Esq. of GKN Securities Corporation, New York, New York. Dean Julia ("Julia") was represented by Adam J. Levitt, Esq. of Cherry & Flynn, located in Chicago, Illinois.

### **CASE INFORMATION**

Statement of Claim filed: March 4, 1996.

Claimant's Submission Agreement signed on: February 26, 1996.

Statement of Answer filed by Respondent GKN on April 25, 1996.

Respondent GKN Submission Agreement signed on: April 25, 1996.

Statement of Answer filed by Respondent Julia on April 24, 1996.

Respondent Julia Submission Agreement signed on: April 24, 1996.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: November 7, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant, alleged that Respondent Julia, while employed by Respondent GKN, had engaged in an unauthorized sale of 4000 shares of the Common Stock of Neoprobe Corp. in July 31, 1995. Liebovich further alleged that Julia did not have discretionary authority, that the sale was made without his knowledge and approval, and that no actions was taken when he requested to Julia that he return the stock to his account. On August 29, 1995, Liebovich wrote the manager of GKN requesting a reversal. His request

was denied.

Respondent GKN denied the material allegations of the Statement of Claim, asserting that claimant was a short-term investor who closely followed the transactions on his account and gave Julia time and price discretion to sell any holdings to preserve profit. Julia sold the shares to protect Claimant's profit as instructed when the price declined. Liebovich did not complain of the sale until August 23, 1996 when the stock price had risen. At that time, claimant complained that he was sold out too soon and to request that Julia find some way of "making it up" or he would transfer his account.

Respondent Julia denied the material allegations of the Statement of Claim, asserting that the stock was sold based upon the prior instructions and authorization from Claimant. Julia notified Liebovich of the Sale on August 3, 1995. At no time during the conversation did Claimant express any displeasure with Julia's action, but was satisfied with the profit made within three weeks. In addition, Julia asserted several affirmative defenses, including the following:

1. Claimant has failed to state a cause of action upon which relief can be granted.
2. Claimant had ratified Julia's actions and did not challenge the transaction until August 29, 1995 when the price had risen approximately three dollars a share; and
3. The claims are barred from recovery under the doctrines of laches, waiver and estoppel, and because of bad faith.

#### **RELIEF REQUESTED**

Claimant Liebovich requested that GKN be ordered to reverse the sale of the 4000 shares of Neoprobe stock and the shares be returned to the Claimant. At hearing, Claimant amended his request to damages in the sum of \$48,000.00.

Respondent GKN requested that the Claim be dismissed in its entirety and that the costs of this proceeding be assessed against Claimant.

Respondent Julia requested that the Claim be dismissed in its entirety together with any further relief the Panel deemed proper, including an award of costs and reasonable attorneys' fees to Julia. In addition, at hearing Julia requested that the record of this event be expunged from his CRD file.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the conclusion of Claimant's case at hearing, the Respondents moved to dismiss the claim. After hearing argument, the Panel determined that the Motion would be denied.

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 originals remain 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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. Respondent Dean Julia's request that his CRD record be expunged is denied;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

**OTHER COSTS**

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 surcharge paid by GKN Securities Corporation pursuant to Section 10333 of the Code of Arbitration procedure.

**FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed:  
Two (2) hearing sessions x \$400.00 per session = \$800.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$120.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant, Sheldon B. Liebovich. In addition, Respondent GKN Securities Corporation is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$400.00 as forum fees. Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures  
Name

/s/ Lee H. Goodman  
Lee H. Goodman  
Public Arbitrator  
Chairperson

November 7, 1996

/s/ Mary Beth Wheeler  
Mary Beth Wheeler, Esq.  
Public Arbitrator

November 7, 1996

/s/ Edward M. Roob  
Edward M. Roob  
Industry Arbitrator

November 7, 1996

For NASD Regulation, Inc. Use Only/Date of Decision: November 8, 1996