

Hearing Dates/Sessions:

	March 23, 1998/two sessions
	March 24, 1998/two sessions
	March 25, 1998/two sessions

Hearing Location: Omni Hotel
Norfolk, VA

CASE SUMMARY

Claimants alleged in the Amended Statement of Claim that Boye, acting personally and as an agent, employee and officer of Quaker, breached an oral contract made between Gobble and Boye. Claimants alleged that Gobble and Boye agreed they would work together in the solicitation of business from Franklin Portfolio Associates ("Franklin") and share the commissions from any transactions with Franklin. Claimants asserted that Gobble and Boye mutually solicited business with Franklin subsequent to the agreement and a relationship with Franklin was established. Claimants further alleged that initially Quaker and Boye complied with the agreement and shared commissions with Claimants as agreed. However, Claimants contended that Quaker and Boye terminated the commissions paid to Claimants and refused to acknowledge any further liability under the contract. Claimants alleged that the Franklin account came under the Quaker/Mid-Atlantic marketing agreement executed in December 1991; that Gobble and Boye entered into a binding oral agreement on July 14, 1992 to share commissions Boye received due to the Franklin account; that Boye was acting with actual or apparent authority as an agent of Quaker and that the oral contract between Boye and Gobble was ratified by the initial payments made to Mid-Atlantic and Gobble on the Franklin account. Therefore, Claimants alleged damages for all the unpaid commissions on the Franklin account under the terms of the oral contract.

Quaker denied any liability under an oral contract between Boye and Claimants as alleged in the Amended Statement of Claim and asserted a crossclaim against Boye in the nature of contribution in the event Quaker is found liable to Claimants. Quaker maintained that Boye had been working on the Franklin account for several months prior to his conversation with Gobble on July 14, 1992 and therefore Franklin could not have been a client introduced to Quaker by Mid-Atlantic within the meaning of the marketing agreement. In addition, Quaker asserted that Boye and Gobble did not enter into a binding oral agreement on July 14, 1992 because there was never a "meeting of the minds" but that even if there had been, the agreement was procured by fraud and misrepresentation on the part of Gobble thereby rendering it void. Quaker maintained that Boye never had actual authority to contract on behalf of Quaker and that Gobble knew that Boye had no authority to bind Quaker contractually. Quaker contended they did not adopt or ratify the Boye/Gobble agreement by the payments made initially to Mid-Atlantic by Quaker since the NASD rules prohibit a registered representative from paying commissions, the payments had to come from Quaker, a registered broker-dealer.

In Answer to the crossclaim filed by Boye, Quaker denied they breached Boye's employment agreement or that the employment contract was modified to extend the time during which Boye would continue to receive commissions on his accounts from six months to twenty-four months after Boye left Quaker in July 1994. Quaker maintained that when Boye exercised his option to buy stock on February 9, 1993, Quaker offered to sell him the stock but he did not have the money to pay for it and consequently the stock was never purchased. Quaker further maintained that even if Boye had purchased the stock he would have had to sell it back to the corporation upon leaving Quaker in July 1994 at little if any gain. In addition, Quaker maintained that any claim as to the stock option was barred by the statute of limitations. Quaker contended that no written modifications were made to Boye's employment contract but that an oral agreement was made with Boye when he left Quaker in July 1994 whereby Boye would receive his commission for eighteen months in return for Boye using Quaker to execute CompBid's trades, and even though Boye breached the oral agreement in August 1995 by ceasing to use Quaker to execute CompBid's trades, Quaker either paid Boye his commissions for the eighteen month period

following his departure from Quaker or it accrued them against certain debts owed to Quaker by Boye.

During the hearing, upon leave of the panel, Quaker asserted a counterclaim against Claimants for abuse of the arbitral process. Quaker alleged that the Franklin account did not fall within the Quaker/Mid-Atlantic marketing agreement and any oral contract between Gobble and Boye was obviously a private deal between Gobble and Boye and that including Quaker as a Respondent was clearly abuse. Quaker alleged that they expended considerable sums in legal fees and that these should be reimbursed by Claimants.

Boye denied allegations of breach of contract as asserted by Claimants. Boye maintained that he was fraudulently induced by Gobble into an illegal contract by falsely claiming a "best friend" relationship with a principal at Franklin and claims that an account would be immediately opened with Franklin merely by Gobble calling his friend. Therefore, Boye offered a conditional contract to Gobble if the account could be opened "now" but that the condition was not met by Gobble. Boye also maintained that Gobble used threats and extorted Boye to share his commissions with him, a view joined by Boye's employer.

Boye asserted that no valid contract existed since it was based upon misstatements and fraudulent claims by Gobble in addition to the performance clause of the contract, i.e., to open the account now, was not met by Claimants. Boye maintained that no "meeting of the minds" occurred and therefore, no contract with Gobble or Mid-Atlantic Securities.

Boye alleged in the crossclaim that Quaker breached Boye's employment agreement by failing to sell Boye certain shares of Quaker stock after he exercised an option to do so on February 9, 1993. In addition, Boye alleged that Quaker modified Boye's employment contract to extend the time during which Boye would continue to be paid commissions on his accounts from six months to twenty-four months after he left Quaker on July 15, 1994 to take the position of President of CompBid, Inc. Boye contended that his termination agreement with Quaker was for twenty-four months as indicated on the marked up version of the employment contract and that the handwriting on the contract was that of Mr. King of Quaker. Boye agreed to use Quaker's statements of the non business fee (2%-3%) to be paid by Neutral Point Technologies, Inc. to Quaker, since Boye had no independent memory of the verbal agreement terms.

RELIEF REQUESTED

Claimant requested damages of \$520,370.80, jointly and severally against Respondents. In addition, Claimants requested that Quaker's claims for attorneys fees be denied.

Quaker requested that all claims by Claimants and crossclaims by Boye be dismissed. Quaker also requested that if Quaker is found liable for any damages, that Boye be found liable to Quaker for any sums required to be paid by Quaker. In addition, Quaker requested legal fees in the amount of \$55,283.12, asserted in the counterclaim at hearing, be assessed to Claimants, jointly and severally.

Boye requested that all claims alleged by Claimants be denied. In the crossclaim and counterclaim Boye requested \$29,700.00 representing all commissions incorrectly paid by Quaker to Claimants, punitive damages as well as interest on the balance due from March 1993 to the date of the hearing; legal fees and expenses in the amount of \$1,000.00; \$84,000.00 in back commissions and pre-award interest.

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 originals remain on file with the NASD.

The panel considered Claimants' Motion to file an Amended Statement of Claim to incorporate the allegations raised in Arbitration No. 94-00410, after the award in the earlier case was vacated by the U.S. District Court and upheld on appeal by the Third Circuit, Respondents' Responses thereto, and granted the Motion.

The panel also considered the Motions to Dismiss reasserted by Respondents at the commencement of the hearing, and Claimants' Responses thereto, and denied the Motions to Dismiss. In addition, the panel considered Quaker's Motion to Preclude all pleadings filed prior to September 1, 1997 based on the possibility that references to the earlier arbitration would taint the current proceedings, and Claimants' Responses thereto, and denied the Motion to Preclude.

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. That Claimants claims are denied; and
2. That Quaker's crossclaim and counterclaim are denied; and
3. That Boye's crossclaim and counterclaim are denied; and
4. That all requests for punitive damages are denied; and
5. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of Forum Fees as specified below; and
6. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure ("Code"), Claimant Mid-Atlantic and Respondent Quaker are each assessed a member surcharge of \$350.

FORUM FEES

Pursuant to Rule 10205(c) of the Code, the following Forum Fees are assessed:

6 sessions x \$1,000.00 = \$ 6,000.00

Forum Fees are assessed one third to Claimants, one third to Quaker and one third to Boye.

Claimants are assessed Forum Fees in the amount of \$2,000.00. Claimants will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Claimants of \$1,400.00.

Quaker is assessed Forum Fees in the amount of \$2,000.00. Quaker will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Quaker of \$1,400.00.

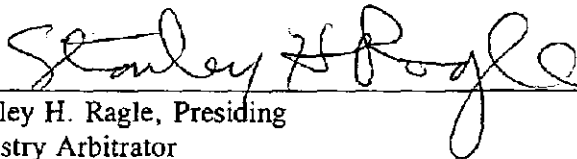
Boye is assessed Forum Fees in the amount of \$2,000.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

7/17/98



Stanley H. Ragle, Presiding
Industry Arbitrator

James Edward Knowles
Industry Arbitrator

Donald L. Tarkenton
Industry Arbitrator

Date Decision Served by NASD Regulation: April 23, 1998

Claimants are assessed Forum Fees in the amount of \$2,000.00. Claimants will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Claimants of \$1,400.00.

Quaker is assessed Forum Fees in the amount of \$2,000.00. Quaker will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Quaker of \$1,400.00.

Boye is assessed Forum Fees in the amount of \$2,000.00.

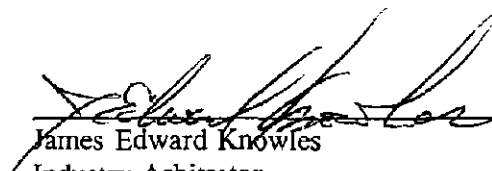
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

Stanley H. Ragle, Presiding
Industry Arbitrator

4/15/98



James Edward Knowles
Industry Arbitrator

Donald L. Tarkenton
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 23, 1998

Claimants are assessed Forum Fees in the amount of \$2,000.00. Claimants will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Claimants of \$1,400.00.

Quaker is assessed Forum Fees in the amount of \$2,000.00. Quaker will receive credit for the \$600.00 hearing session deposit previously submitted, leaving a net assessment due for Forum Fees from Quaker of \$1,400.00.

Boye is assessed Forum Fees in the amount of \$2,000.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

Stanley H. Ragle, Presiding
Industry Arbitrator

James Edward Knowles
Industry Arbitrator

4-16-98


Donald L. Tarkenton
Industry Arbitrator

Date Decision Served by NASD Regulation:

April 23, 1998