

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Edward M. Tarnawski

96-02657

Name of Respondents

Kensington Wells Incorporated
Erik J. Drewes

REPRESENTATION

For Claimant Edward M. Tarnawski ("Claimant"), appeared Norman Trabulus, Esq., a sole practitioner located in Mineola, New York.

For Respondent Kensington Wells, Inc. ("Kensington"), appeared Howard Eilen, Esq. of the law firm Lehman & Eilen located in Uniondale, New York.

For Respondent Erik J. Drewes ("Drewes") appeared Joseph Keenan, Esq. of the law firm Bochat & Keenan, P.C. located in Garden City, New York.

CASE INFORMATION

Statement of Claim filed: June 20, 1996.

Claimant's Submission Agreement signed on: June 7, 1996.

Joint Statement of Answer filed by Respondents, Kensington and Drewes on: August 20, 1996.

Respondents Kensington and Drewes did not file Submission Agreements as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:	June 11, 1997	-	Two Sessions
	June 12, 1997	-	Two Sessions
	July 30, 1997	-	Two Sessions
	July 31, 1997	-	Two Sessions

The hearings were held in the offices of NASD Regulation, Inc., located at 125 Broad St., New York City, New York.

CASE SUMMARY

Claimant alleged that in August 1995, Kensington was the underwriter in an initial public offering of Videolan Technologies' warrants ("warrants"). Claimant also alleged that he was later contacted by Drewes, a registered representative of Kensington, who solicited him to buy VT warrants, highlighting Kensington's market maker status as a potential advantage, but failed to disclose Kensington's role as underwriter for the security wherein a conflict of interest for the company and for its representatives responsible for making recommendations to clients was created. Claimant asserted that in November 1995, he agreed to purchase warrants from Kensington via Drewes all the while oblivious to Drewes undisclosed interests in Videolan. Claimant further asserted that when the quoted price of the warrants had increased to \$38 per share, claimant called Drewes and placed a stop loss order at \$35, but Drewes attempted to dissuade him by informing him that he had purchased additional shares for him which was without authorization. Claimant also asserted that he was astonished at Drewes action, but since the stock was running as high as \$41 1/4, and with the assurance of the stop loss order he did not cancel the purchase giving Drewes discretion to hold or sell the warrants as he deemed fit but for the stop loss order. Claimant contended that he called Drewes later that day to discover that the price of the warrants had dropped well below the stop loss value mark and that Drewes had failed to execute claimant's sell order. Claimant further contended that he complained to Drewes's supervisor, Bruce Guirino, and to William Velanis, believed to be of Kensington's compliance department, nevertheless; after this, Drewes again failed to execute claimant's stop loss order. Claimant also contended that he then lost faith in Drewes and directed his securities to be transferred from his Kensington account to his account at Kedem Capital Corp. ("Kedem"), but Kensington refused to transfer a portion of the warrants, maintaining that claimant had not paid for the warrants, which were those Drewes had purchased for claimant without authorization. Claimant maintained that Kensington sold the warrants that had not been paid for deducting a service charge while the remaining warrants were transferred to Kedem and later sold at a relatively small loss. Claimant further maintained that if Drewes had honestly exercised the discretion claimant gave him, he would have sold the warrants when the price peaked at or near \$41 1/4, yielding an increased revenue of \$260,457.36.

Respondents maintained that the claimant was a seasoned investor who was aware that the warrants were volatile and that Kensington was Videolan's market maker and lead underwriter. Respondent further maintained that these facts were all disclosed to claimant. Respondents further maintained that though claimant did request a stop-loss order on the warrants at \$35, then later at \$25, Drewes responded both times that he could not accept a stop-loss order on an NASDAQ stock such as Videolan, but would keep claimant apprised so that he could sell at anytime, to which claimant agreed. Respondents also maintained that, in November 1996, claimant instructed Drewes to sell 5000 warrants, the order was placed but "unable" and claimant was so notified.

RELIEF REQUESTED

Claimant requested an award of \$781,372.00, plus interest, punitive damages of \$250,000.00, plus attorney's fees and forum charges.

Respondent requested that the claim be dismissed and that all costs, and attorney's fees be assessed against claimant.

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 remain on file with the NASD.

The arbitration panel made the following rulings concerning respondents Kensington Wells, Inc. and Erik Drewes who did not file Submission Agreements in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Kensington Wells, Inc. was a member of the NASD, and Erik Drewes an associated person thereto, at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondents pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondents were required to file with NASD Regulation properly executed Submission Agreements pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondents, pursuant to Rule 10314(a) of the Code.

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 claims of claimant Edward M. Tarnawski against respondents Kensington Wells Inc. and Erik J. Drewes are dismissed in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

8 sessions x \$1,000	= \$8,000.00
Minus claimant's \$1,000.00 deposit	= <u>\$1,000.00</u>
total outstanding	= \$7,000.00

Respondent Kensington Wells, Inc. be and hereby is liable for \$8,000.00 representing the total amount of Forum Fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, therefore, Respondent Kensington Wells, Inc., shall pay to NASD Regulation, Inc., the sum of \$7,000.00 and shall pay to claimant \$1,000.00 as reimbursement of the hearing sessions deposit.

The panel determined that NASD Regulation shall retain the \$500.00 previously deposited by respondent Kensington Wells in satisfaction of the member surcharge under Rule 10333.

The panel determined that NASD Regulation shall retain the \$1,000.00 postponement fee previously deposited by respondent Erik J. Drewes with respect to his adjournment request.

ARBITRATORS' SIGNATURES

I, Robert Pincus, 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.



Robert Pincus, Esq.
Public Chairperson

I, Gerald Alpert, 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.

Gerald Alpert, Esq.
Public Arbitrator

I, Raymond J. Cullen,, MBA, 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.

Raymond J. Cullen, MBA
Industry Arbitrator

Date of Decision: September 12, 1997

ARBITRATORS' SIGNATURES

I, Robert Pincus, 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.

Robert Pincus, Esq.
Public Chairperson

I, Gerald Alpert, 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.



Gerald Alpert, Esq.
Public Arbitrator

I, Raymond J. Cullen, MBA, 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.

Raymond J. Cullen, MBA
Industry Arbitrator

Date of Decision: September 12, 1997

ARBITRATORS' SIGNATURES


I, Robert Pincus, 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.

Robert Pincus, Esq.
Public Chairperson

I, Gerald Alpert, 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.

Gerald Alpert, Esq.
Public Arbitrator

I, Raymond J. Cullen, MBA, 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.


Raymond J. Cullen, MBA
Industry Arbitrator

Date of Decision: September 12, 1997