

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Zakria A. Khan

96-02860

Name of Respondent

Quick and Reilly, Inc.

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REPRESENTATION

For claimant Zakria A. Khan ("claimant") appeared David H. Zimmer, Esq., a sole practitioner located in Potomac, Maryland.

For respondent Quick and Reilly, Inc. ("respondent") appeared Bennett Falk, Esq., from the law firm of Morgan, Lewis & Bockius LLP located in Miami, Florida.

CASE INFORMATION

Statement of Claim was filed on July 3, 1996. Claimant's Submission Agreement was signed on June 27, 1996.

Statement of Answer was filed on September 3, 1996. Respondent's Submission Agreement was signed on September 3, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: March 21, 1997 - Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., located at New York, New York.

CASE SUMMARY

Claimant alleged that, in February 1996, he opened an account with respondent and that, on May 7, 1996 at 9:24 a.m., he called respondent's Forest Hills, New York office and instructed Brian McGovern ("McGovern") to purchase 10,000 shares of Zenith Electronics Corp. ("Zenith") at the opening. Claimant also alleged that the trade was a market order. Claimant

asserted that, between 9:30 a.m. and 9:45 p.m., he twice contacted respondent's agent, Marty Roan ("Roan"), but was unable to find out the status of his market order. Claimant also asserted that at 9:54 a.m. he called Roan and asked him if his order had been executed so he could sell, but that Roan informed him he did not know if his order had been executed so he could not accept a market order to sell the 10,000 shares.

Claimant contended that, since he could not sell the shares, he instructed Roan to cancel the initial purchase order and Roan, believing the original order to purchase had not been executed, mistakenly accepted the instructions to cancel. Claimant maintained that his purchase of 10,000 shares of Zenith was confirmed at 10:22 a.m., but that he was not informed of this until he called McGovern at 12:00 p.m. Claimant alleged that he told McGovern that he was not going to accept the trade. Claimant also alleged that he did not place an order to sell at this point because an employee of respondent represented that they would look into the legality of the transaction.

Claimant alleged that, after the market closed on May 7, 1996, McGovern told him that he was subject to the losses and that it was necessary to deposit \$97,433.00 into the account within three days to meet a margin call. Claimant further alleged that, on May 10, 1996, he began liquidating other positions at significant losses to meet the margin call. Claimant also alleged that, on May 13, 1997, he talked with Peter Cummings ("Cummings"), who informed him his account did not have a margin call, but that, when he called Cummings after the market closed, Cummings told him that he would have to deposit an additional \$54,000.00 by the next day or respondent would have to liquidate his entire account. Claimant asserted that Cummings told him this margin call had been due since May 10, 1996 and if he had sold all of his positions on that date he would have had \$40,000.00 in his account and if he had liquidated his account earlier on May 13, 1996, when Cummings had told him he did not have a margin call, his account would have been worth \$24,000.00. Claimant contended that, on May 14, 1996, he liquidated additional securities to meet the margin call and was left with an account balance of \$11,000.00.

Claimant asserted claims against respondent for fraudulent nondisclosure, negligent misrepresentation, breach of fiduciary duty and failure to supervise.

Respondent maintained that, on May 7, 1996 at 9:24 a.m., claimant contacted McGovern and placed an order to purchase 10,000 shares of Zenith at market price which was immediately placed. Respondent also maintained that claimant called again at 9:45 a.m. and was told that Zenith was experiencing a delayed opening and that, at 9:56 a.m., claimant was told there was no immediate response from the NYSE regarding the order. Respondent contended that claimant instructed McGovern to "cancel the order in hopes of forcing a report", but that McGovern explained to claimant that the original purchase order would be executed and that the cancel order would be rejected by the NYSE as a result of the execution.

Respondent maintained that a confirmation of the execution was received at 10:20 a.m. and was relayed to claimant and that McGovern explained to claimant that his order was executed at the opening price, that no price discrepancies were apparent and that claimant owned the Zenith shares as the result of his purchase instructions. Respondent alleged that claimant stated that he

did not want to suffer a monetary loss and hoped that Zenith would bounce back so he might be able to break even on the transaction. Respondent also alleged that, over the next few days, the value of claimant's portfolio declined because of market volatility and, as a result of this decline, claimant instructed respondent to liquidate his portfolio resulting in severe losses.

Respondent maintained that at no time did it misrepresent material facts, make false statements or breach any fiduciary responsibility in dealing with claimant. Respondent further maintained that claimant was free to sell his shares at any time after he was told he owned the shares, but that claimant chose to hold his position and only brought this action because the market did not respond as he had anticipated. Respondent also maintained that all of its registered representatives were adequately supervised.

### **RELIEF REQUESTED**

Claimant requested an award as follows:

1. On the claim for fraudulent nondisclosure in a total amount not to exceed \$250,000.00.
2. On the claim for negligent misrepresentation in a total amount not to exceed \$250,000.00.
3. On the claim for breach of fiduciary duty in a total amount not to exceed \$250,000.00.
4. On the claim for failure to supervise in such an amount not to exceed the difference in the amount awarded in the above claims and \$30,000.00.
5. Punitive damages in such an amount not to exceed the difference in the amount awarded in the above claims and \$250,000.00.
6. Fair and reasonable attorneys fees in such an amount not to exceed the difference in the amount awarded in the above claims and \$250,000.00.
7. Interest on the foregoing claim and the costs in such an amount not to exceed the difference in the amount awarded in the above claims and \$250,000.00.
8. In the alternative, rescission of any and all trades inclusive of the purchase of 10,000 shares of Zenith and subsequent liquidation of the account due to the margin call respective to this ill-fated transaction.

Respondent requested that Claimant's claims be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED AND 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.

### **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. All claims against respondent are dismissed in their entirety.
2. Claimant's request for attorneys' fees is hereby denied.
3. Claimant's request for punitive damages is hereby denied.
4. Each party shall bear their own costs.
5. All claims are hereby denied.

### **FORUM FEES**

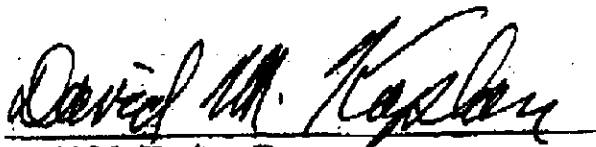
Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

$$2 \text{ hearing sessions} \times \$750.00 = \$1,500.00$$

Claimant be and hereby is liable for the sum of \$1,500.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation and, therefore, claimant is liable for the balance of \$750.00.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures



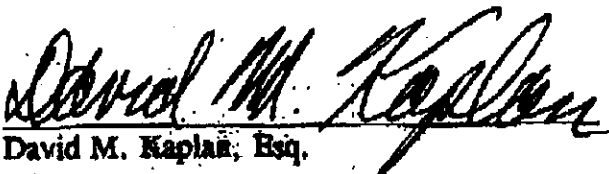
David M. Kaplan, Esq.  
Chairperson-Public Arbitrator

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Murray L. Cole, Esq.  
Public Arbitrator

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Mitchell Eberg, Esq.  
Industry Arbitrator

Date of decision: May 5, 1997

I, David M. Kaplan, 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.



David M. Kaplan, Esq.

Arbitrators' Signatures

\_\_\_\_\_  
David M. Kaplan, Esq.  
Chairperson-Public Arbitrator

\_\_\_\_\_  
*Murray L. Cole*  
Murray L. Cole, Esq.  
Public Arbitrator

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Mitchell Elberg, Esq.  
Industry Arbitrator

Date of decision: May 5, 1997

I, Murray L. Cole, 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.

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*Murray L. Cole*  
Murray L. Cole, Esq.

Arbitrators' Signatures

\_\_\_\_\_  
David M. Kaplan, Esq.  
Chairperson-Public Arbitrator

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Murray L. Cole, Esq.  
Public Arbitrator

Mitchell Elberg, Esq.  
Mitchell Elberg, Esq.  
Industry Arbitrator

Date of decision: May 5, 1997

I, Mitchell Elberg, 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.

Mitchell Elberg, Esq.  
Mitchell Elberg, Esq.