

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Arland C. Johnson

and

96-03881

Name of Respondent

John G. Kinnard and Company, Inc.
Jack Naastad

REPRESENTATION OF PARTIES

Arland C. Johnson ("**Claimant**") was represented by Ralph T. Smith, Esq., Smith Law Firm, P.A. Bemidji, Minnesota.

John G. Kinnard and Company, Inc. ("**Respondent Kinnard**") and Jack Naastad ("**Respondent Naastad**") (collectively as "**Respondents**") were represented by Ted Meikle, Esq., John G. Kinnard and Company, Inc., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about August 30, 1996. Submission Agreement of Claimant Arland C. Johnson was signed on August 27, 1996.

Statement of Answer was filed by Respondents John G. Kinnard and Company, Inc. and Jack Naastad on or about October 25, 1996. Submission Agreement of Respondent John G. Kinnard and Company, Inc. was signed on October 24, 1996 by Gerald M. Gifford. Submission Agreement of Respondent Jack Naastad was signed on October 28, 1996.

HEARING INFORMATION

The hearing was held on Wednesday, June 25, 1997 for two (2) sessions and Thursday, June 26, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondents made an unauthorized sale of First City Bancorporation of Texas, Inc. ("First City") shares. Claimant also alleged that Respondents failed to use due diligence in advising him of the circumstances surrounding the increase in price and market availability for the shares.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant had entered an order to sell 2,900 of the 3,900 shares he held in First City. It was stated by Respondents that at the time they became aware of the market in First City, customers who held a position were contacted. Further stated that Claimant failed to properly notify them of the allegation of unauthorized trading. In support of their statement, Respondents allege that Claimant had a conversation, regarding a different complaint, with the branch manager within days of the alleged unauthorized transaction and did not mention the trade in question.

RELIEF REQUESTED

Claimant requested the following relief:

1. Kinnard should replace the 2,900 shares of First City that it sold without authorization.
2. In the alternative, Kinnard should pay damages representing the difference between the sale price received for the stock and the current market price, At the time of filing this amount was \$155,805.00.
3. Kinnard should pay punitive damages in the amount of \$100,000.00 for its reckless and intentional failure to properly advise the Claimant of the circumstances of the stock at the time it was sold and for selling the stock without authorization.
4. Kinnard should pay damages representing costs, interest, and reasonable attorneys' fees

Respondents requested that the claims asserted against them be dismissed and that they be awarded their costs and attorneys' fees.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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 asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees, incurred in this matter.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to Rule 10332(b) 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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Arland C. Johnson. Claimant Arland C. Johnson shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the additional sum of \$750 as forum fees. Respondents shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as the balance due for forum fees. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ James H. Levy
James H. Levy
Public Arbitrator, Presiding Chair

Dated: July 9, 1997

/s/ Jerry M. Helfand, Esq.
Jerry M. Helfand, Esq.
Public Arbitrator

July 7, 1997

/s/ Emily B. Boote
Emily B. Boote
Industry Arbitrator

July 20, 1997