

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

John R. Smilovich

96-04389

Name of Respondents

Kensington Wells Incorporated
Edwin Lawrence, Jr.

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on October 2, 1996, claimant John Smilovich ("claimant"), who appeared Pro Se, alleged that respondents Kensington Wells Incorporated ("KWI") and Edwin Lawrence ("Lawrence") traded in his account without his authorization. Claimant further alleged that on August 4, 1995, he was solicited by Mr. Rogan of KWI and agreed to purchase 500 shares of Callaway Golf ("ELY") at 15 1/8. Claimant also alleged that on August 10, 1995, he was solicited by Lawrence and bought 300 units of Videolan Technologies ("VLNT") at \$4.00 per unit, which included a warrant and one common share. Claimant asserted that he also purchased an additional 2,000 VLNTW's in the aftermarket at 6 1/8. Claimant further asserted Lawrence recommended that he liquidate all his shares of ELY to purchase VLNT and VLNTW and on August 14, 1995, claimant authorized the sale of 500 shares on ELY to cover the cost of VLNT and VLNTW, plus claimant agreed to forward additional funds in the amount of \$6,230.00. Claimant contended that on August 23, 1995, he contacted Lawrence and explained to him that he needed to become liquid for \$6,000.00 and asked him to sell his warrants for that amount.

Claimant further contended that on Friday, August 25, 1995, Lawrence called and suggested that he redirect his assets into another stock called XECHEM International Inc. ("ZKEM"). Claimant also alleged that Lawrence persisted that he buy ZKEM when he told him that he wanted to hold his remaining shares of VLNT and VLNTW. Claimant alleged that he told Lawrence that he was not familiar with the stock and wanted to find out more about the company before he would consider such an action. Claimant further alleged that on Monday, August 28, 1995 he received a confirmation stating that a purchase of 1600 shares of ZKEM at 11 3/8 had been purchased in his account. Claimant also alleged that this trade was totally unauthorized and was done without his permission. Claimant asserted that he when he confronted Lawrence, he falsely claimed that claimant had given him the okay to buy the stock and that he was responsible to pay for it.

Claimant further asserted that for the next few days he tried to correct the mistake, but Lawrence refused to cancel this illegal trade. Claimant also asserted that on September 5, 1995 he decided to pursue arbitration, and contacted Lawrence to notify him. Claimant contended that he contacted Lawrence

who agreed to take half of the 1600 ZKEM shares. Claimant further contended that Lawrence also agreed to split the difference in losses on the remaining 800 shares of ZKEM, but only under the stipulation that he submit a letter rescinding any allegations of unauthorized buys. Claimant also contended that he was coerced into sending the letter in order to protect himself against any further losses.

Claimant alleged that on September 7, 1995 he was contacted by Lawrence that the rescission letter was not adequate. Claimant further alleged that he was hesitant to send a second letter because of he was unsure of the legality of its content. Claimant also alleged that on September 12, 1995, Lawrence told him that if he did not receive the amended rescission letter by 12 noon, he would be responsible for the purchase of the original 1600 shares of ZKEM. September 15, 1995 1600 shares of VLNTW was sold to cover the buy of 800 shares of ZKEM, an excess of 200 VLNTW's were sold over and above the cost of the 800 ZKEM again without authorization.

Respondents Lawrence and KWI (collectively referred to as "respondents") through their representative and counsel Howard S. Eilen, Esq., of the law firm Lehman & Eilen, located in Uniondale, New York emphatically denied that Lawrence made any unauthorized trades for the claimant's account. Respondents maintained that in August of 1995, claimant authorized the purchase of 300 units of VLNT and 3,000 units of VLNTW. Respondents further maintained that claimant subsequently stated that he did not have the liquidity to pay for the full after market purchase and asked that 1,000 warrants be canceled. Respondents also maintained that as an accommodation, 1,000 of the 3,000 VLNTW units were canceled without cost to the claimant.

Respondents contended that claimant specifically authorized the purchase of 1,600 shares of ZKEM. Respondents further contended that claimant alleged that this transaction was consummated without his consent and Lawrence immediately referred the matter of the compliance department. Respondents also contended that claimant had numerous discussions with compliance personnel and an accord was reached whereby KWI agreed to split the loss of canceling the purchase of 800 of the 1600 ZKEM shares. Respondents further maintained that claimant agreed to withdraw his allegation of unauthorized trading and that no one coerced claimant to write any letter. Respondents contended that they and claimant have already resolved any dispute as to the purchase of ZKEM by sharing the loss. Respondents further contended that claimant acknowledges in his Statement of Claim that KWEI was authorized and instructed to sell VLNT to pay for the ZKEM purchase.

RELIEF REQUESTED

Claimant John Smilovich requested \$9,999, plus fees and expenses.

Respondents Kensington Wells, Inc. and Edwin Lawrence requested that the claims of claimant be dismissed in their entirety, with costs assessed against the claimant, together with such other relief and further relief deemed appropriate.

AWARD

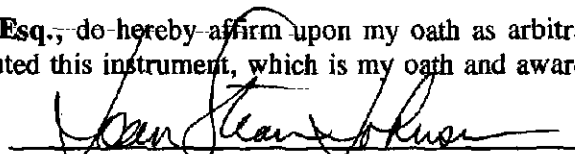
Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Joan Stearns-Johnsen, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant John Smilovich on October 1, 1996. Respondents KWI and Lawrence did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant John Smilovich against respondents KWI and Lawrence are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by the NASDR, Inc. Respondents KWI and Lawrence be and hereby are jointly and severally liable and shall pay claimant the sum of \$75.00 as reimbursement of one-half of the filing fee,

AFFIRMATION

I, ~~Joan Stearns-Johnsen, Esq.~~, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Joan Stearns-Johnsen, Esq.

Date of Decision: March 21, 1997