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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Linda Kay Phelps,

Claimant,

and

No. 96-04433

GKN Securities Corporation
and Martin Pike,

Respondents.

REPRESENTATION OF PARTIES

Claimant Linda Kay Phelps, ("Phelps") was represented by Kurt M. Noell, Esquire located in Tyler, Texas.

Respondents GKN Securities Corporation, ("GKN") and Martin Pike, ("Pike") were represented by Katherine Nathan, Esquire of GKN Securities Corp. located in New York, New York.

CASE INFORMATION

Claimant Phelps' Statement of Claim was filed on or about October 15, 1996.
Claimant Phelps' Submission Agreement was signed on September 30, 1996.

Respondents' GKN and Pike's Statement of Answer was filed on or about November 20, 1996.
Respondent GKN's Submission Agreement was signed on January 2, 1997.
Respondent Pike's Submission Agreement was signed on March 21, 1997.

HEARING INFORMATION

A pre-hearing conference was held on September 18, 1997 for one (1) session.
The hearing was held on October 9, 1997 for a total of three (3) sessions.

The hearing was held in Dallas, Texas.

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CASE SUMMARY

Claimant Linda Kay Phelps, brought this action against Respondent GKN Securities Corporation and Respondent Martin Pike, alleging causes of action including failure to execute and failure to supervise. Specifically, Phelps alleged that Pike, the account executive who serviced her account at GKN for the period January to May 1996, failed to execute a limit order to sell 3,000 shares of Stratosphere Corp. \$9,000 less the expected sale price. Phelps also alleged that GKN is liable for failing to adequately supervise the activity in her account.

Phelps had purchased and sold Stratosphere, Corp. on a previous occasion. Phelps explained that Pike of GKN had contacted Phelps again about purchasing the stock. Several purchases were made. Phelps explained that on or about March 1, 1996, just before leaving on a trip out of the country, Phelps was on the telephone with Pike, in which she told Mr. Pike to sell all of Stratosphere when it reached 13 1/2. After this order to sell was made, the stock reached this level, but it was not sold. Rather, the stock had to be sold at 10 1/2, or a loss of \$3.00 per share on the 3,000 total shares held.

Phelps explained that this account was opened and always maintained as a short term income account and that GKN had failed to properly monitor and train account executives to insure that customers were properly taken care of.

Respondents GKN Securities Corporation and Martin Pike denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Specifically, GKN asserted that the only purchases at GKN were three purchases of 1,000 shares each of Stratosphere in January 1996 at prices of 9 1/2, 11 and 12 3/8, respectively. Pike denied Phelps' claim that Phelps gave Pike a limit order to sell these shares at 13 1/2.

Pike asserted that at the time of Phelps' alleged limit order, the stock was virtually inactive. Pike explained that it was not until April 24, the only day during that period in which the stock traded between 13 1/2 and 13 7/8, an all time high for the stock. Respondents asserted that the price declined each day between April 22 and May 1, 1996, when the shares were sold.

Respondents explained that not mentioned in the Statement of Claim is the fact that the stock was sold on an unsolicited basis for two full months after the alleged order was placed, and that during that period, Phelps was in regular contact with Pike, received monthly statements reflecting the diminished value of the position and was aware of the one day spike in the price of Stratosphere. Respondents contended that not once during that time period did Phelps contact GKN supervisory personnel to lodge a complaint about the alleged failure to execute the sale.

Furthermore, Respondents argued that since Stratosphere is a NASDAQ listed security, due to the nature of the market for NASDAQ stocks, it is not possible to take a limit order for the sale of a security at a particular price. Respondents explained that at best, a client could ask that an account executive notify the client if a particular price level is reached, and that there is nothing in the record or in the allegation to indicate that Phelps made such a request.

RELIEF REQUESTED

Claimant Phelps requested a just and fair arbitration in the matter, including the \$9,000.00 profit, attorneys fees, and costs of arbitration.

Respondents GKN and Pike requested that the claims asserted against it be dismissed in their entirety and that the arbitration panel order that the claims be expunged from the NASD records and that the costs of this proceeding be assessed against Claimant Phelps.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimant Phelps, the undersigned arbitrator has determined that Respondents GKN and Pike have been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondents GKN and Pike had received due notice of the hearing as required under § 10318 of the Code. Pike had received due notice.

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, signed and 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 and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That the Respondents GKN Securities Corporation and Martin Pike are jointly and severally liable for and shall pay to Claimant Linda Kay Phelps \$9,000.00 (nine thousand dollars) as compensatory damages and 10% interest from the date of service of the award until the award is paid in full;
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$ 200.00 per hearing session and \$200 for each pre-hearing conference, if any. There was one (1) pre-hearing conferences and there were three (3) hearing sessions x \$200.00 = \$800.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$75.00 and shall retain as forum fees the hearing session deposit of \$200.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Phelps.

Pursuant to § 10333 of the Code, GKN Securities Corporation is liable for and shall pay its non-refundable member surcharge of \$100.00 to the NASD Regulation, Inc. Office of Dispute Resolution.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees of \$200.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, GKN Securities Corp.

Respondents GKN Securities Corp. and Martin Pike are jointly and several liable for and shall reimburse the Claimant Linda Kay Phelps forum fees she previously paid in the amount of \$275.00.

Respondents GKN Securities Corp. and Martin Pike are jointly and several liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution remaining forum fees in the amount of \$600.00.

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

Concurring Arbitrator Signature

/s/ Joann Peters

December 10, 1997

Joann Peters, Esq.
Chairperson
Public Arbitrator

Dated: