

NASD REGULATION, INC.
FINAL ORDER

In the Matter of the Arbitration Between

Names of Claimants

David Kast
K.P.M., Inc.

96-04818

Names of Respondents

Greenway Capital Corporation
Dominick DeLorenzo
Barry Morton Ferrari
Joseph M. Guccione
Fred Luthy

REPRESENTATION

For Claimants David Kast ("Kast") and K.P.M., Inc. ("KPM") (collectively "Claimants") appeared Jenice L. Malecki, Esq. of the law offices Singer Zamansky LLP located in New York, New York.

Respondent Greenway Capital Corporation ("Greenway") did not enter an appearance in this matter.

Respondent Dominick DeLorenzo ("DeLorenzo") did not enter an appearance in this matter.

For Respondent Barry Morton Ferrari ("Ferrari") appeared George Brunelle, Esq. a private practitioner with offices located in New York, New York.

Respondent Joseph M. Guccione ("Guccione") did not enter an appearance in this matter.

Respondent Fred Luthy ("Luthy") did not enter an appearance in this matter.

CASE INFORMATION

Claimants' Statement of Claim was filed on October 30, 1996. Claimants' Reply to Ferrari's Counterclaim was filed on February 4, 1997. Kast's Submission Agreement was signed on November 27, 1996. KPM's Submission Agreement was signed on November 27, 1996.

Respondent Greenway did not file a Statement of Answer or an executed Submission Agreement.

Respondent DeLorenzo did not file a Statement of Answer or an executed Submission Agreement.

A Statement of Answer, Counterclaim and Cross Claim was filed by Respondent Ferrari on January 27, 1997. Respondent Ferrari did not submit a properly executed Submission Agreement.

Respondent Guccione did not file a Statement of Answer or an executed Submission Agreement.

Respondent Luthy did not file a Statement of Answer or an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:

August 8, 1997

- One Session

CASE SUMMARY

Claimants alleged that, in or about August 1995, when they opened accounts with Greenway through broker/registered representative DeLorenzo, he never inquired as to Claimants' investment objectives or experience. Claimants also alleged that, in or about the early fall of 1995, DeLorenzo refused to execute a sell order of stocks in which Greenway was the market maker. Claimants further alleged that, after this incident, they opened an account with Dean Witter Reynolds, Inc. ("Dean Witter") and requested that DeLorenzo transfer their accounts. Claimant asserted that, on October 26, 1995, DeLorenzo coerced him to sign a letter which rescinded his transfer request. Claimants also asserted that, on two additional occasions, they again requested that their accounts be transferred. Claimants further asserted that Respondents forged or falsified Kast's signature or redated his letter of October 26, 1995 in an attempt to rescind Claimants' second and third transfer requests. Claimants contended that, on November 11, 1995, DeLorenzo and Greenway engaged in unauthorized trading in Claimants' accounts. Claimants also contended that, upon notification of these unauthorized trades in their accounts, they immediately contacted the Compliance Department of Greenway to initiate an investigation. Claimants also contended that, through their actions, Greenway, DeLorenzo and Ferrari engaged in manipulative and deceptive devices or contrivances, common law fraud, common law breach of contract, common law recklessness in failing to follow instructions, common law negligence in failing to follow instructions, and fraudulent conversion. Claimants further contended that Greenway, Ferrari, Luthy and Guccione failed maintain and enforce a proper system of internal supervision over DeLorenzo.

Respondent Ferrari maintained that his duties at Greenway did not include the supervision of DeLorenzo, nor the supervision of activity in the Claimants' accounts. Ferrari also maintained that he was not familiar with the opening of Claimants' accounts, or the trading activity in the accounts, or the circumstances under which the accounts were opened or maintained. Ferrari further maintained that he was informed by Greenway's management that Luthy would handle further investigation into Claimants' complaint, and was unaware of the progress or completion of the investigation or of any further communications from, or on behalf of, Claimant.

In his Counterclaim, Ferrari maintained that Claimants' allegations were recklessly asserted against him and will cause substantial harm to his reputation, as well as, financially. Ferrari also maintained that the allegations of wrongdoing against him appeared to be based solely upon his job title.

In his Cross Claim against Greenway, Ferrari maintained that he is entitled to be indemnified by Greenway with respect to all damages and costs which he may incur in connection with this proceeding.

In their reply to the Counterclaim, Claimants maintained that Ferrari was licensed and registered for supervision and compliance of Greenway and its registered persons.

RELIEF REQUESTED

Claimants requested:

1. recision of each and every transaction effected in the Kast and KPM accounts;
2. compensatory damages for trading losses in the amount of \$57,388.58 for Kast and \$76,575.63 for KPM;
3. an amount equal to attorneys' fees accrued during the pendency of this action and to be calculated at the close of the hearing;
4. filing fee and forum costs of \$1,250.00 and any and all future payments which are required;
5. punitive damages of \$1,000,000.00 for Kast and \$1,000,000.00 for KPM, or a sufficient sum to deter Respondents from similar conduct in the future; and
6. interest, compounded annually, at the highest legally permissible rate.

Respondent Ferrari requested:

1. dismissal in its entirety of the Statement of Claim as it pertains to him;
2. compensatory damages in an amount to be established by the proofs at trail;
3. an award of indemnification against Greenway with respect to see damages and costs which Ferrari incurred in connection with this proceeding;
4. interest at the legal rate of 9% per annum, compounded annually;
5. reasonable counsel fees and costs; and
6. such other and further relief as the arbitrators deemed just and proper.

Claimants requested that Ferrari's Counterclaim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

During the pre-hearing conference conducted on August 8, 1997, counsel for Claimants dismissed Respondent Ferrari from the case.

Claimants made a Motion for Default Judgement against Respondents. The panel hereby enters a default in favor of Claimants and against Respondents Greenway, DeLorenzo, Guccione, and Luthy (collectively "Respondents"). Claimants were asked to submit an affidavit or certification attesting to the calculation of damages incurred by reason of Respondents' conduct.

The panel made the following determinations concerning Respondents Greenway, DeLorenzo, Guccione and Luthy, who did not file Statements of Answer and Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondents DeLorenzo, Guccione and Luthy were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondents DeLorenzo, Guccione and Luthy pursuant to Rule 10301 of the Code.
3. The panel found that Respondents Greenway, DeLorenzo, Guccione and Luthy were required to file Statements of Answer and Submission Agreements with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Respondents Greenway, DeLorenzo, Guccione and Luthy, pursuant to Rule 10314(a) of the Code.

AWARD

The panel has made the following determination in full and final resolution of the issues submitted for determination as follows:

1. Respondents Greenway, Guccione, DeLorenzo and Luthy (collectively "Respondents") be and hereby are jointly and severally liable for and shall pay to Kast compensatory damages in the amount of \$51,957.83.
2. Respondents be and hereby are jointly and severally liable for and shall pay to KPM compensatory damages in the amount of \$79,107.58.
3. Respondents be and hereby are jointly and severally liable for and shall pay to Claimants filing fees and forum costs in the amount of \$1,250.00.
4. Claimants' requests for punitive damages is hereby denied.

5. Each party shall bear its respective costs, including attorneys' fees.
6. All other requests for relief are hereby denied.

FORUM FEES

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

1 Pre-hearing conference x \$1,000.00 (with full panel) = \$1,000.00

1. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit as payment for the forum fees assessed for the hearing conducted in this matter.
2. Greenway be and hereby is liable for and shall pay the sum of \$500.00 for the member surcharge. Greenway has not submitted the sum of \$500.00 and, therefore, owes the member surcharge.
3. Ferrari be and hereby is liable for and shall pay the sum of \$500.00, representing the filing fee assessed for initiating a Counterclaim in this matter. Ferrari has not submitted the sum of \$500.00 and, therefore, owes the filing fee.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures



Sheldon M. Finkelstein, Esq.
Chairperson - Public Arbitrator

Date of decision: _____

I, Sheldon M. Finkelstein, 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.



Sheldon M. Finkelstein, Esq.

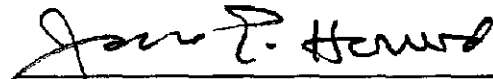
Arbitrators' Signatures



James E. Howard
Public Arbitrator

Date of decision: _____

I, **James E. Howard**, 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.


James E. Howard

Arbitrators' Signatures

Howard L. Mandell

Howard L. Mandell, Esq.
Public Arbitrator

Date of decision: _____

I, Howard L. Mandell, 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.

Howard L. Mandell

Howard L. Mandell, Esq.