

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Avraham Balaban

NASD CASE NO. 96-05710

Names of Respondents

GKN Securities Corp., Eric Johnson
and Edward Gallagher

REPRESENTATION

For Claimant: Stephen D. Spivey, Esq., Ocala, Florida.

For Respondents GKN Securities Corp. ("GKN") and Edward Gallagher ("Gallagher"): Originally Katherine Nathan, Esq., Vice President of GKN Securities Corp. On November 20, 1998, NASD Regulation, Inc. was advised that David S. Smith, Esq. of Smith Campbell & Paduano, New York, New York, had been retained to represent Respondents GKN and Gallagher in substitution for Katherine Nathan, Esq.

For Respondent Eric Johnson ("Johnson"): Originally Cary A. Lubetsky, Esq. of Bedzow, Korn & Kan, P.A., Aventura, Florida. On July 10, 1998, NASD Regulation, Inc. was advised that Bedzow, Korn, Brown & Lipton, P.A. had withdrawn as counsel for Johnson. On October 20, 1998, NASD Regulation, Inc. was advised that Leon Baer Borstein, Esq. of Borstein & Sheinbaum, New York, New York was representing Johnson in this matter.

CASE INFORMATION

Statement of Claim filed on December 23, 1996. Claimant's Submission Agreement signed on November 25, 1996.

Statement of Answer filed by Respondents GKN and Gallagher on March 10, 1997. Respondent GKN's Submission Agreement signed on March 10, 1997 by Katherine Nathan, Vice President of GKN Securities Corp. Respondent Gallagher's Submission Agreement signed on March 10, 1997.

Statement of Answer filed by Respondent Johnson on March 21, 1997. Respondent Johnson's Submission Agreement signed on March 20, 1997.

Amended Statement of Claim filed by Claimant on October 5, 1998.

HEARING INFORMATION

On December 18, 1997, a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel (the "Panel"). On February 9, 1998, a telephonic pre-hearing conference lasting one session was conducted with the Chairperson of the Panel. On September 15, 1998 and February 16 and 17, 1998, in Tampa, Florida, hearings lasting 5 sessions were conducted with the Panel.

CASE SUMMARY

Claimant alleged claims of unsuitability, misrepresentation, unauthorized trading, negligent supervision, and violations of the NASD Rules of Fair Practice, rules of the Securities and Exchange Commission and Florida Law by the Respondents.

Between November, 1991 and August, 1994, Claimant suffered losses in the amount of \$31,858.00 based upon what Claimant asserts are investments in unsuitable, high-risk stocks that were sold to Claimant based upon misrepresentations of fact and omissions of fact. Moreover, Claimant alleges that numerous unauthorized trades were conducted in the account while the Claimant was out of the country.

Respondents GKN Securities Corp. and Edward Gallagher denied all liability to Claimant and requested that the Statement of Claim be dismissed in its entirety. Respondents GKN and Gallagher contended that Claimant's allegations were not only untrue, but implausible in light of the undisputed facts. Among other things, Claimant's Statement of Claim failed to point out that Claimant's account at GKN was serviced by another broker, not named as a respondent, for approximately a year before the account was assigned to Respondent Eric Johnson. During that year, the account lost money but Claimant elected to maintain the account at GKN and to continue investing in the same types of securities. Respondents GKN and Gallagher also pointed out that Claimant's investments at GKN were typical of his investments at other brokerage firms and consistent with his stated investment objectives. In addition, Claimant signed two separate margin agreements. Respondents GKN and Gallagher also pointed out that Claimant made only one complaint to GKN concerning his account, and it failed to allege any instance of unauthorized trading. Finally, Respondent Gallagher contended that, although he shared a joint rep number with Respondent Johnson for a portion of the period that Claimant maintained his account at GKN, Gallagher never transacted any trades for Claimant and never recommended any transactions to Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$31,858.00 plus interest at the legal rate for a total of \$43,204.17 and requests a finding by the panel that the Respondents violated the Florida Securities and Investor Protection Act for purposes of perfecting an attorney's fee award in a court of competent jurisdiction.

Respondents requested that the Statement of Claim be dismissed in its entirety, together with an award of the costs and expenses incurred by each of them in defense of this claim, including reasonable attorneys' fees. Respondent Gallagher further requested that this matter be expunged from his CRD record.

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 originals remain on file with NASD Regulation, Inc.

On February 12, 1999, NASD Regulation, Inc. was advised that Claimant had dismissed all claims against Respondent Johnson in this matter. Therefore, the Panel did not reach any determinations with respect to this Respondent.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents GKN and Gallagher are dismissed in their entirety.
2. The Panel hereby directs that any and all references to the above-captioned arbitration be expunged from the CRD record of Respondent Edward Gallagher.
3. Claimant shall pay costs in the sum of \$2,000.00 to Respondent Gallagher.
4. All other claims for relief, including the parties' requests for attorneys' fees, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), the Panel has assessed forum fees in the sum of \$2,700.00 (1 pre-hearing conference with the Chairperson of the Panel x \$300.00 and 1 pre-hearing conference with the Panel x \$400.00, plus 5 sessions x \$400.00) as follows:

1. Claimant is hereby assessed the sum of \$1,350.00 for which NASD Regulation, Inc. shall retain the \$400.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$950.00.
2. Respondent GKN is hereby assessed the sum of \$1,350.00 for which NASD Regulation, Inc. shall retain the hearing session deposits in the amount of \$1,350.00 previously paid by GKN in full satisfaction thereof.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the \$120.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent GKN has paid to NASD Regulation, Inc. the

Date of Decision: April 1, 1999

\$200.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, Respondent GKN has paid to NASD Regulation, Inc. the \$400.00 adjournment fee for the postponement of the April 7 - 8, 1998 scheduled hearing dates.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Richard W. Reeves, Esq.
Chairperson

Public

Harold M. May

Public

Daniel Calabria
Daniel Calabria

Industry

Date of Decision: 3/30/99

\$200.00 member surcharge previously invoiced.

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Chairperson

Public


Harold M. May

Public

Daniel Calabria

Industry

Date of Decision: Feb. 17, 1999