

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

James Smith

Case No. 99-00476

Names of Respondents

GKN Securities Corp.
Robert Daniel McIntyre

REPRESENTATION OF PARTIES

For Claimant James Smith, hereinafter referred to as "Claimant": Samuel T. Brannan, Esq. of the law firm of Wilson, Strickland & Benson, P.C., Atlanta, Georgia.

For Respondents GKN Securities Corp. ("GKN") and Robert Daniel McIntyre ("McIntyre"), hereinafter collectively referred to as "Respondents": David S. Smith, Esq. of the law firm of Smith, Campbell & Paduano, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 21, 1999.

Claimant signed the Uniform Submission Agreement: January 14, 1999.

Statement of Answer filed by Respondents on or about: April 25, 1999.

Respondent McIntyre signed the Uniform Submission Agreement: June 21, 1999.

Respondent GKN did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following: On July 22, 1998, Respondent McIntyre sold 775 shares of Compaq common stock from Claimant's account without obtaining Claimant's prior authorization. On July 23, 1998, Respondent McIntyre purchased 950 shares of Source Media common stock in Claimant's account without obtaining Claimant's prior authorization. Respondent McIntyre's unauthorized trades constitute fraudulent acts under the securities laws and NASD rules. Respondent GKN is liable for Respondent McIntyre's unauthorized trading as a controlling person of Respondent McIntyre and under the doctrine of respondeat superior.

Respondents denied all allegations of wrongdoing and asserted the following: Claimant authorized both the sale of the Compaq shares on July 22, 1998 and the purchase of Source

Media shares on July 23, 1998. Both transactions were consistent with Claimant's prior trading history in the account, both in terms of the type of stocks previously traded and the generally short holding periods for positions bought and sold in the account. Further, Claimant previously had bought and sold Compaq within a short time period, and it was undisputed that Claimant had authorized the previous buy and sell transactions. In addition, Claimant made a profit on the disputed sales of Compaq on July 22, 1998.

RELIEF REQUESTED

At the hearing Claimant requested the issuance of an award against Respondents, jointly and severally, for compensatory damages in the amount of \$22,745.42; pre-award interest in the amount of \$4,376.09; post-award interest at the annual rate of 14.63% from November 15, 1998 until the award is paid; attorney's fees and expenses in the amount of \$34,675.00; punitive damages in the amount of \$68,236.26; and, costs (filing fees and hearing session deposits). Claimant further requested that all unpaid costs be assessed against Respondents.

Respondents requested that the Statement of Claim be dismissed in its entirety, that all forum costs be assessed against Claimant and that all references to this claim be ordered expunged from the CRD records of both Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent GKN did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered.

AWARD

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

All claims by the Claimant against Respondents are dismissed in all respects.

Claimant's request for punitive damages is denied.

Respondents' request for an expungement of all references to this arbitration from their CRD records is denied.

Each party shall bear their respective costs, including attorneys' fees.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$75.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$400.00

Adjournment Fees

No adjournments were requested during these proceedings.

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with the Chairperson x \$	= \$300.00	
Pre-hearing conference:	July 7, 1999	1 session
Two Hearing sessions x \$300.00	= \$600.00	
Hearing Date:	November 15, 1999	2 sessions
Total Forum Fees		= \$900.00

The Arbitrator has assessed the total forum fees of \$900.00 to Respondent GKN.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$75.00
Total Fees	= \$75.00
<u>Less payments</u>	<u>= \$75.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent GKN be and hereby is solely liable for:

Member Fees	= \$400.00
Forum Fees	= \$900.00

Total Fees	= \$1,300.00
<u>Less payments</u>	= <u>\$400.00</u>
Balance Due NASD Regulation, Inc.	= \$900.00

All balances are due and payable to NASD Regulation, Inc.

Arbitrator's Signature

/s/
Joseph N. Miller
Presiding Chair

Signature Date

November 24, 1999

Date of Service (For NASD office use only)

Total Fees	= \$1,300.00
<u>Less payments</u>	<u>= \$400.00</u>
Balance Due NASD Regulation, Inc.	= \$900.00

All balances are due and payable to NASD Regulation, Inc.

Arbitrator's Signature



Joseph N. Miller
Presiding Chair

11/23/99

Signature Date

Date of Service (For NASD office use only)