

**AWARD
NASD REGULATION, INC.**

In the Matter of the Arbitration Between

Name of Claimant

Gateway Partners, LLC

and

Name of Respondent

Keith Kozel

Case Number
99-00987

REPRESENTATION OF PARTIES

For Gateway Partners, LLC ("**Claimant**") appeared Andrew P. Weiss, Esq., a sole practitioner, located in New York, New York.

For Keith Kozel ("**Respondent**") appeared Ted Poretz, Esq., of the law firm Richards & O' Neil, LLP, located in New York, New York.

CASE INFORMATION

Claimant filed the Statement of Claim on March 3, 1999.

Claimant executed the Uniform Submission Agreement on March 4, 1999.

Respondent filed the Statement of Answer on March 4, 1999.

Respondent did not sign a Uniform Submission Agreement.

HEARING INFORMATION

Injunctive Relief Hearing:	March 11, 1999	Two Sessions
Pre-Hearing Conference:	March 23, 1999	One Session
	March 24, 1999	One Session
Hearing Dates:	March 25, 1999	Two Sessions
	March 29, 1999	Two Sessions
	May 5, 1999	Two Sessions
	May 6, 1999	One Session
	May 11, 1999	Two Sessions
	May 12, 1999	Two Sessions

The hearings were held at the NASD Regulation, Inc., Philadelphia District Office, located in Philadelphia, Pennsylvania.

CASE SUMMARY

Claimant alleged that the parties entered into a written agreement pertaining to Respondent's employment with Claimant. According to the Statement of Claim, the agreement provided that Respondent would engage in the floor trading of financial options on behalf of Claimant. In addition, Respondent agreed not to take positions that created undue risk to Claimant. Claimant would also be able to instruct Respondent to take corrective action to alleviate the undue risk. Furthermore, Claimant alleged that the agreement provided that Respondent would not engage in floor trading at the American Stock Exchange, Philadelphia Stock Exchange, Pacific Coast Exchange, or the Chicago Board of Options from December 1, 1998 through April 1, 2000, if Respondent voluntarily terminated his employment with Claimant.

Claimant asserted that Respondent breached the agreement. Specifically, Claimant provided that Respondent engaged in trades that created undue risk in the Home Depot securities and options. Claimant also stated that Respondent was asked to take corrective actions, however, Respondent failed to do so. Upon resolving this issue, Claimant alleged that Respondent went out on personal leave. During Respondent's leave, Claimant alleged that Respondent was posted to become a floor trader at the American Stock Exchange, a direct violation of the Agreement. Claimant further alleged that Respondent voluntarily terminated his employment with Claimant.

Respondent denied the allegations of wrongdoing set forth in the Statement of Claim. Specifically, Respondent stated that one of Claimant's principal, Ron Ianieri, advised traders that if they did not sign a non-compete agreement they would be terminated. Respondent maintained that he attempted to negotiate a more favorable non-compete agreement. The negotiations resulted in a minimal improvement of the terms. Respondent asserted that his relationship with Claimant declined as a result of his attempt to negotiate a better agreement. Respondent maintained that after Respondent signed the agreement he was terminated, in full view of his colleagues, on January 13, 1999. Although Respondent was subsequently asked to remain with Claimant, he never returned to the firm after January 15, 1999.

RELIEF REQUESTED

Claimant requested:

1. compensatory damages in the amount of \$163,000.00;
2. punitive damages;
3. monetary damages equal to all draws paid by Gateway to Kozel from January 15, 1999 through February 1, 1999;

4. the cost of Respondent's seat rental until February 17, 1999;
5. fifty percent of Respondent's trading profits generated from his activity on the floor of the AMEX on and after February 24, 1999; and
6. an order prohibiting Kozel from trading options on the floor of the AMEX, PHLX, Pacific Coast Exchange and Chicago Board of Option until April 1, 2000.

Respondent requested:

1. that the Statement of Claim be dismissed in its entirety;
2. arbitration cost;
3. that the application for injunction be denied and that the interim injunction be dissolved; and
4. the \$20,000.00 escrow.

OTHER ISSUES CONSIDERED & DECIDED

Respondent did not file with NASD Regulation, Inc. Office of Dispute Resolution ("NASD Regulation") a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10201 of 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 arbitration panel on all issues submitted.

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 original remains on file with NASD Regulation.

AWARD

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

1. Respondent shall be and hereby is enjoined from engaging in the floor trading of financial options on the following exchanges: the Pacific Coast Exchange, the Chicago Board of Options Exchange; the Philadelphia Stock Exchange; the American Stock Exchange or any exchange that Claimant is a member, until and including December 2, 1999.
2. Respondent shall reimburse Claimant's \$500.00 filing fee.
3. Claimant's request for compensatory damages is denied.

4. Claimant's request for punitive damages is denied.
5. Claimant's request for monetary damages equal to all draws paid by Gateway to Kozel from January 15, 1999 through February 1, 1999 is denied.
6. Claimant's request for the cost of Respondent's seat rental until February 17, 1999 is denied.
7. Claimant's request for fifty percent of Respondent's trading profits generated from his activity on the floor of the AMEX on and after February 24, 1999 is denied.
8. Any and all other relief request are denied.

OTHER COST

Pursuant to Rule 10333 of the Code, Claimant was assessed a member surcharge in the amount of \$1,500.00, an injunctive fee in the amount of \$2,500.00, a prehearing processing fee in the amount of \$600.00, and a hearing processing fee in the amount of \$2,500.00, which have been paid.

Pursuant to Rule 10333 of the Code, Diamond Securities was assessed a member surcharge in the amount of \$1,500.00, a prehearing processing fee in the amount of \$600.00, and a hearing processing fee in the amount of \$2,500.00, which have not been paid.

FORUM FEES

Pursuant to Rule 10332 of the Code, the arbitrators have determined that the NASD will retain the \$500.00 filing fee deposited by the Claimant.

The arbitrators have assessed the following forum fees:

3 Pre-Hearing Conference	x	\$300.00	=	\$ 900.00
1 Pre-Hearing Conference (Full Panel)	x	\$750.00	=	\$ 750.00
11 Hearing Sessions	x	\$750.00		<u>\$ 8250.00</u>
Total Forum Fees				\$ 9,900.00

Respondent has been assessed \$9,900.00 representing the total amount of forum fees. Therefore, Respondent shall pay to NASD Regulation, Inc., \$9,900.00 in satisfaction of outstanding forum fees. Respondent shall reimburse Claimant's \$500.00 filing fee. Claimant will be reimbursed its \$450.00 of its hearing session deposit.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Brian A. Carlis, Esq. - Public Chairperson
James P. O'Donnell - Public Panelist
John B. Ryan - Industry Panelist

ARBITRATOR'S SIGNATURE



Brian A. Carlis, Esq.
Public Chairperson

Date Decision Served by NASD Regulation, Inc.:

June 8, 1999

ARBITRATION PANEL

Brian A. Carlis, Esq. - Public Chairperson

James P. O'Donnell - Public Panelist

John B. Ryan - Industry Panelist

ARBITRATOR'S SIGNATURE


James P. O'Donnell
Public Panelist

Date Decision Served by NASD Regulation, Inc.:

June 8, 1999

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-00987

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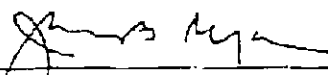
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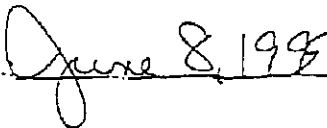
John B. Ryan - Industry Panelist

ARBITRATOR'S SIGNATURE



John B. Ryan
Industry Panelist

Date Decision Served by NASD Regulation, Inc.



June 8, 1997