

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David R. and Patricia Kiehn, Claimants vs. Whale Securities Co., L.P. and Semos Kostidakis, Respondents; and Whale Securities Co., L.P., Third-Party Claimant vs. SG Cowen Securities Corporation, Third-Party Respondent.

Case Number: 99-01815

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

Claimants, David R. and Patricia Kiehn, hereinafter referred to as "Claimants": Joanie Y. Kim, Esq., Weiss Jensen Ellis & Howard, Seattle, Washington

Respondent, Whale Securities Co., L.P. ("Whale"): David S. Richan, Esq., Blank Rome Tenzer Greenblatt LLP, New York, New York

Respondent, Semos Kostidakis ("Kostidakis"): Semos Kostidakis, Long Branch, New Jersey

Respondent, SG Cowen Securities Corporation ("SG Cowen"): Peter Byer, Esq., SG Cowen Securities Corporation, New York, New York

CASE INFORMATION

Statement of Claim filed on or about: April 16, 1999

Claimants, David R. and Patricia Kiehn, signed the Uniform Submission Agreement: April 15, 1999

Answer, Affirmative Defenses and Third-Party Claim of Respondent Whale filed on or about: July 21, 1999

Respondent, Whale, signed the Uniform Submission Agreement: July 21, 1999

Respondent Kostidakis' Answer to Claimants' Statement of Claim filed on or about: November 30, 1999

Statement of Answer filed by Respondent, SG Cowen, on or about: December 1, 1999

Respondent, SG Cowen, signed the Uniform Submission Agreement: October 13, 1999

CASE SUMMARY

Claimants alleged that they incurred losses as a result of Respondent Whale's wrongful cancellation of Mr. Kiehn's buy order on January 6, 1999 for 6,000 shares of Data Broadcasting Corporation stock.

Respondent Kostidakis denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Mr. Kostidakis alleged that Claimants' allegations are completely devoid of merit, at least as to Mr. Kostidakis. Mr. Kostidakis further alleged that he was merely the account executive for the Claimants' account at Whale; he did not have any involvement in the back office operations at Whale; and that any damages allegedly suffered by Claimants were due to Whale's back office failures. Mr. Kostidakis also asserted affirmative defenses.

Respondent Whale denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Whale alleged that at all times it supervised its employees appropriately and asserted affirmative defenses.

Whale alleged the following claims with respect to its Third-Party Claim against SG Cowen: 1) Negligence; and 2) Contribution and Indemnity.

Respondent SG Cowen denied all liability for any of the alleged losses incurred by Claimants and alleged that it properly enforced the margin regulations in placing the Claimants' account under a 90-day restriction and requesting of Whale that the disputed trade be cancelled. SG Cowen further alleged that it appears from a review of the Statement of Claim that Whale never advised the Claimants that their account had been placed on 90-day restriction and alleged that Claimants would have deposited sufficient cash in the account so as to complete the disputed transaction. SG Cowen further alleged that to the extent Claimants suffered any losses, those losses were due to omissions on the part of Whale and not due to the activity of SG Cowen in enforcing the applicable margin rules.

RELIEF REQUESTED

Claimants requested damages in the amount of \$107,580.

Respondent Kostidakis requested that the Statement of Claim be dismissed as to Mr. Kostidakis; and requested an award of legal fees and interest thereon and such other and further relief as the Panel deems appropriate.

Respondent Whale requested that the Claim be dismissed against it in its entirety and with prejudice and that it be awarded its costs incurred defending the Claim. Whale asserted that in the event such claim is not dismissed with prejudice, then SG Cowen should be held liable for any damages sustained by Claimants.

Third-Party Respondent SG Cowen requested that the Third-Party Claim against it be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kostidakis did not file with NASD Dispute Resolution, Inc. ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, appeared and testified at the hearing via telephone, is bound by the determination of the Panel on all issues submitted.

On or about May 12, 2000, the Panel granted Respondent Kostidakis' request for a waiver of the \$1,125.00 postponement fee in connection with the adjourned hearing dates of July 11-14, 2000.

On or about June 26, 2000, SG Cowen requested that Whale's Third-Party Claim against it be dismissed. On August 15, 2000, the Panel determined that SG Cowen's request for dismissal be reserved for the arbitration on the grounds that the request concerned issues of material fact requiring testimony. In the course of the arbitration, SG Cowen's request for dismissal was denied.

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.

AWARD

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

1. Respondents Whale and Kostidakis are jointly and severally liable for and shall pay to Claimants the sum of \$1,168.75 in compensatory damages.
2. Respondents Whale and Kostidakis are jointly and severally liable for and shall pay to Claimants the sum of \$184.66 in interest from January 11, 1999 through December 7, 2000.
3. Respondents Whale and Kostidakis are jointly and severally liable for and shall pay to Claimants the sum of \$300.00 as reimbursement for Claimants' filing fee.
4. Regarding Whale's Third-Party Claim, SG Cowen is liable for and shall be responsible for one third of the Claimants' total award of compensatory damages and interest.
5. The parties shall each bear their respective costs including attorney's fees.
6. This Award shall bear interest at the rate of 8% per annum from December 8, 2000 until paid.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
Third-Party Claim filing fee	= \$500.00

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 firms are parties.

Whale

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

SG Cowen

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

Forum Fees and Assessments

The Panel 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. Forum fees associated with these proceedings are based on the initial hearing session deposit made by Claimants and the Third-Party Claimant's hearing session deposit:

Pre-hearing conference:	March 21, 2000	1 session
Hearing sessions:	December 5, 2000	2 sessions
	December 6, 2000	2 sessions
	December 7, 2000	1 session

Claimants' Assessment:

One (1) Pre-hearing session x \$1,125.00	= \$1,125.00
Five (5) hearing sessions x \$1,125.00	= \$5,625.00
Total Forum Fees	= \$6,750.00

The Panel determined that Claimants shall be assessed forum fees at a 25% rate in the amount of \$1,687.50 based on Claimants' hearing session deposit and hearing sessions held.

Mr. Kostidakis' Assessment:

One (1) Pre-hearing session x \$1,125.00	= \$1,125.00
Five (5) hearing sessions x \$1,125.00	= \$5,625.00
Total Forum Fees	= \$6,750.00

The Panel determined that Mr. Kostidakis shall be assessed forum fees at a 25% rate in the amount of \$1,687.50 based on the initial hearing session deposit made by Claimants and hearing sessions held.

Whale's Assessment:

One (1) Pre-hearing session x \$1,000.00	= \$1,000.00
Five (5) hearing sessions x \$1,000.00	= \$5,000.00
Total Forum Fees	= \$6,000.00

The Panel determined that Whale shall be assessed forum fees at a 25% rate in the amount of \$1,500.00 based on Whale's hearing session deposit and hearing sessions held.

SG Cowen's Assessment:

One (1) Pre-hearing session x \$1,125.00	= \$1,125.00
Five (5) hearing sessions x \$1,125.00	= \$5,625.00
Total Forum Fees	= \$6,750.00

The Panel determined that SG Cowen shall be assessed forum fees at a 25% rate in the amount of \$1,687.50 based on the initial hearing session deposit made by Claimants and hearing sessions held.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

The parties did not incur administrative costs.

Fee Summary

1. Claimants, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$1,987.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD-DR	= \$ 562.50

2. Respondent, Kostidakis, be and hereby is solely liable for:

Forum Fees	= \$1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$1,687.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD-DR	= \$1,687.50

3. Respondent, Whale, be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$ 500.00
Member Fees	= \$4,600.00
Forum Fees	= \$1,500.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$6,600.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD-DR	= \$ 500.00

4. Respondent, SG Cowen, be and hereby is solely liable for:

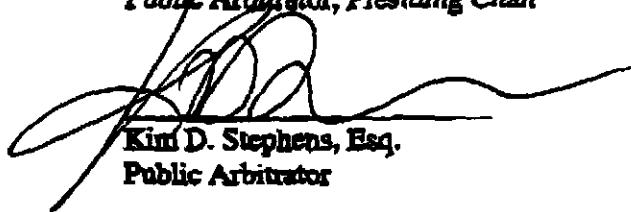
Member Fees	= \$3,800.00
Forum Fees	= \$1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$5,487.50
<u>Less payments</u>	= \$3,800.00
Balance Due NASD-DR	= \$1,687.50

All balances are due to NASD Dispute Resolution, Inc. and are payable within 30 days of the service date of this Award.

NASD Dispute Resolution, Inc.
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Concurring Arbitrators' Signatures

Richard D. Brady, Esq.
Public Arbitrator, Presiding Chair



Kim D. Stephens, Esq.
Public Arbitrator

Signature Date

1/3/01
Signature Date

Robert McCullough
Industry Arbitrator

Signature Date

Date Served:

JAN 4 2001
Date of Service (For NASD office use only)

Date Served:

JAN 4 2001

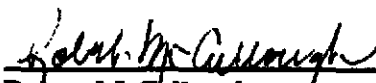
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Richard D. Brady, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Kim D. Stephens, Esq.
Public Arbitrator

Signature Date


Robert McCullough
Industry Arbitrator


JAN. 3, 2001
Signature Date

Date Served:
JAN 4 2001

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.
Arbitration No. 99-01815
Award Page 7 of 7

Concurring Arbitrators' Signatures



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Public Arbitrator, Presiding Chair

1-4-01

Signature Date

Kim D. Stephens, Esq.
Public Arbitrator

Signature Date

Robert McCullough
Industry Arbitrator

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