

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dr. Charles Passet DPM PC Money Purchase Pension Plan & Trust and Dr. Charles Passet IRA (Claimants) v. GKN Securities Corp., Wertheim Schroder & Co., Pendrick Reeves Associates, Inc., Bruce Rubin, Elliot Kurz, Vincent Bruno, David Nussbaum, Robert Gladstone, Roger Gladstone (Respondents)

Case Number: 99-02001

Hearing Site: New York City, New York

Nature of the Dispute: Customers vs. Members and Associated Persons

REPRESENTATION OF PARTIES

Claimants, Dr. Charles Passet DPM PC Money Purchase Pension Plan & Trust ("Passet MPP") and Dr. Charles Passet IRA ("Passet IRA"), hereinafter collectively referred to as "Claimants": Appeared *Pro Se*. Previously represented by Scott M. Zucker, Esq., Lake Success, NY.

Respondent, GKN Securities Corp ("GKN"), Wertheim Schroder & Co., ("Wertheim"), Elliot Kurz ("Kurz"), Vincent Bruno ("Bruno"), David Nussbaum ("Nussbaum"), Robert Gladstone ("Gladstone"), and Roger Gladstone (R.Gladstone") hereinafter referred to as "Respondents": David S. Smith, Esq., Smith, Campbell & Paduano, New York, NY.

Respondent GKN was previously represented by Katherine Nathan, Office of General Counsel, GKN Securities, Corp., New York, NY.

Respondent Pendrick Reeves Associates, Inc., ("Pendrick") did not enter an appearance.

Respondent, Bruce Rubin ("Rubin") did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: April 29, 1999.

Claimants signed the Uniform Submission Agreement: April 21, 1999.

Claimant filed Amended Statement of Claim on or about: February 16, 2001.

Statement of Answer filed by Respondent GKN on or about: September 10, 1999.

Respondent GKN signed the Uniform Submission Agreement: September 13, 1999.

Response to Claimants' Amended Statement of Claim filed on or about: October 18, 2000.

Joint Statement of Answer and Motion to Dismiss filed by Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone and Wertheim on or about: June 21, 2001.

Respondent Kurz did not submit a signed Uniform Submission Agreement.
Respondent Bruno did not submit a signed Uniform Submission Agreement.
Respondent Nussbaum did not submit a signed Uniform Submission Agreement.
Respondent Gladstone did not submit a signed Uniform Submission Agreement.
Respondent R. Gladstone did not submit a signed Uniform Submission Agreement.
Respondent Wertheim did not submit a signed Uniform Submission Agreement.

Respondent Pendrick did not make an appearance in this matter, nor submit a Statement of Answer or signed Uniform Submission Agreement.

Respondent Rubin did not make an appearance in this matter, nor submit a Statement of Answer or signed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: fraud, churning, securities fraud, unsuitable recommendations, breach of fiduciary duty, negligence, market manipulation, conversion, loss of opportunity damages, and unjust enrichment. The causes of action relate to common stock.

Unless specifically admitted in their Answer, Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone and Wertheim denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 300,000.00
Punitive Damages	\$ 200,000.00
Interest	From date of award until paid
Attorneys' Fees	Unspecified
Other Costs	Filing Fees

Claimants requested in their Amended Statement of Claim:

Compensatory Damages	\$ 800,000.00
Punitive Damages	\$ 200,000.00
Interest	From date of award until paid
Attorneys' Fees	Unspecified
Other Costs	Filing Fees

In response to the initial Statement of Claim, Respondent GKN requested the Statement of Claim be dismissed in its entirety, that the claims be expunged from its NASD records, and that the Panel assess all expenses and costs to Claimants.

In response to the Amended Statement of Claim, Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone, and Wertheim requested that the Amended Statement of Claim be dismissed with prejudice, that the Panel issue an award to Respondents, and the Panel should grant such other and further relief as deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone and Wertheim, Pendrick and Rubin did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about February 16, 2001, Claimants submitted a Motion to Amend the Statement of Claim. After due consideration, the Panel granted the motion.

A pre-hearing conference was held on April 16, 2002, to hear oral arguments on the Motion to Dismiss by Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone and Wertheim. After due consideration, the Panel denied the Motion to Dismiss without prejudice as moot.

A pre-hearing conference was held on August 15, 2002, to further elaborate on the Motion to Dismiss submitted by Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone and Wertheim. However, Claimants informed the Panel that the claims against Respondent Wertheim were being withdrawn without prejudice. Respondent did not object. Accordingly, Wertheim was no longer a party to this proceeding and its Motion to Dismiss was therefore denied as moot.

On or about May 2, 2002, Respondent Kurz filed for bankruptcy under Chapter 7 of the Bankruptcy Code of the United States Bankruptcy Court for the District of Connecticut. Therefore, all claims against Kurz were stayed in this matter.

On or about September 23, 2002, Claimants settled their claims with Respondents GKN, Kurz, Bruno, Nussbaum, Gladstone, R. Gladstone, Wertheim, and Rubin solely in his capacity as a former employee of GKN. However, the claim proceeded against Respondents Pendrick, and Rubin in his capacity as an employee of Respondent Pendrick.

At the conference on September 26, 2002, the Panel directed Claimants' counsel to prepare an Order setting forth the schedule he intended to follow pursuant to which he would submit papers to the Panel in an attempt to demonstrate to the Panel that he commenced the arbitration proceeding against Respondent Rubin within fourteen days of this date. If no such information were received at that time, then the Panel would presume the Claimants did not wish to proceed and the case would be closed. If Claimants wished to proceed, then Claimants' counsel should have prepared the directed Order and set the date by which he would have made submission. In such submission, Claimants' counsel was to make a proffer of the facts he would adduce at a hearing and the applicable law sufficient to demonstrate that service was effected and the proceeding validly commenced against said Respondent. Claimants' counsel did not submit the Order.

NASD Dispute Resolution ("NASDR DR") has been unable to reschedule this matter since the cancellation of the initial pre-hearing conference scheduled on January 16, 2003. Several attempts were made to contact Claimant asking him to advise NASD DR as to the status of this matter. To date, NASD DR has not received a response and the Panel has determined to dismiss this matter without prejudice.

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. Claimants' claims are dismissed without prejudice in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, GKN and Wertheim are parties.

Member surcharge (GKN)	= \$ 1,500.00
Member surcharge (Wertheim)	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 6-8 and March 6-7, 2002 adjournment by Claimants	= \$ 600.00
February 6-8 and March 6-7, 2002 adjournment by Respondents	= \$ 600.00
September 5-6 and September 9-10, 2002 adjournment by Claimants	= \$ 750.00
September 5-6 and September 9-10, 2002 adjournment by Respondents	= \$ 750.00

The Director of Arbitration waived any unpaid adjournment fee balances.

Forum Fees and Assessments

The Panel has waived the forum fees for the following hearing sessions. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: January 16, 2003 1 session

Five (5) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 6,000.00
Pre-hearing conferences: September 11, 2000 1 session
August 21, 2001 1 session
January 31, 2002 1 session
April 16, 2002 1 session
August 15, 2002 1 session

One (1) Hearing session @ \$1,200.00 = \$ 1,200.00
Hearing Dates: September 26, 2002 1 session

Total Forum Fees = \$ 7,650.00

1. The Panel has waived all forum fees against Claimants.
2. The Panel has waived all forum fees against Respondent Pendrick.
3. The Panel has waived all forum fees against Respondent Rubin.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 1,350.00
Total Fees	= \$ 1,650.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution = \$225.00 - Waived	= \$ 0.00

2. Respondent, GKN is solely liable for:

<u>Member Fees</u>	= \$ 5,600.00
Total Fees	= \$ 5,600.00
<u>Less payments</u>	= \$ 5,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Wertheim is solely liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,100.00

4. Respondents GKN, Kurz, Bruno, Nussbaum, R.Gladstone, Gladstone, and Wertheim are jointly and severally liable for:

<u>Adjournment Fees</u>	= \$ 1,350.00
<u>Total Fees</u>	= \$ 1,350.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution = \$1,350.00 - Waived	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert J. Kheel
Cheryl H. Agris
Emad A. Zirky

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.


Robert J. Kheel
Public Arbitrator, Presiding Chairperson

Signature Date

Cheryl H. Agris
Public Arbitrator

Signature Date

Emad A. Zirky
Non-Public Arbitrator

Signature Date

July 29, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

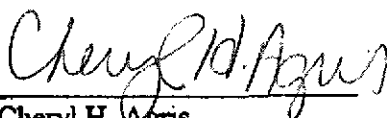
Robert J. Kheel	-	Public Arbitrator, Presiding Chairperson
Cheryl H. Agris	-	Public Arbitrator
Emad A. Zirkly	-	Non-Public Arbitrator

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Robert J. Kheel
Public Arbitrator, Presiding Chairperson

Signature Date



Cheryl H. Agris
Public Arbitrator

Signature Date

Emad A. Zirkly
Non-Public Arbitrator

Signature Date

July 29, 2005
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ARBITRATION PANEL

Robert J. Kheel	-	Public Arbitrator, Presiding Chairperson
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Robert J. Kheel
Public Arbitrator, Presiding Chairperson

Signature Date

Cheryl H. Agris
Public Arbitrator

Signature Date



Emad A. Zirky
Non-Public Arbitrator

7/22/05
Signature Date

July 29, 2005
Date of Service (For NASD Dispute Resolution use only)