

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Joseph Walsh, (Claimant) vs. Knight Securities, Inc. and Trimark Securities, L.P.,  
(Respondents)

Case Number: 99-02005

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Joseph Walsh, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, Knight Securities, Inc. ("Knight"): Thomas M. Merritt, Esq., Assistant General Counsel, Knight Securities, Inc., Jersey City, NJ. Previously represented by: Rick Gilette, Esq., Regulatory Counsel, Knight Securities, Inc., Jersey City, NJ.

Respondent, Trimark Securities, L.P. ("Trimark"), did not appear at the hearings in this matter. Previously represented by: Thomas M. Merritt, Esq., Assistant General Counsel, Knight Securities, Inc., Jersey City, NJ and Rick Gilette, Esq., Regulatory Counsel, Knight Securities, Inc., Jersey City, NJ, respectively.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 1999.

First Amendment to the Statement of Claim filed on or about: August 18, 2000.

Second Amendment to the Statement of Claim filed on or about: January 11, 2001.

Response to Motions to Dismiss filed by Claimant on or about: August 2, 2000.

Claimant signed the Uniform Submission Agreement: April 27, 1999.

Statement of Answer and Motion to Dismiss filed by Knight on or about: August 3, 1999.

Statement of Answer to Amended Statement of Claim filed by Knight on or about: January 9, 2001.

Knight signed the Uniform Submission Agreement: March 16, 2000.

Motion to Dismiss filed by Trimark on or about: August 3, 1999.

Trimark did not file a Statement of Answer or sign a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following cause of action: Knight traded ahead of Claimant's limit orders causing Claimant damages. Claimant's claim involved a variety of stocks.

Unless specifically admitted in its Answers, Knight denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has not met the burden of proof to sustain an action; Claimant fails to calculate damages; Claimant's allegations fail to state a claim upon which relief may be granted; Claimant fails to assert any facts that would establish any duty upon Knight to justify an Award of damages; Claimant had no contractual relationship with Knight; Claimant failed to exercise reasonable care and diligence to protect himself from or to mitigate any damages that he may have sustained; Knight fully discharged all duties owed to Claimant, to the extent such duties existed, in conformity with all applicable law, industry custom, and practice; Knight at all times acted in good faith; Claimant has not alleged or established any facts that Knight acted with scienter with respect to any of the transactions at issue; Claimant would be unjustly enriched if he recovered any of the sums claimed to be due; Knight owes no fiduciary duty to Claimant; and Claimant failed to assert any facts justifying an award of punitive damages.

### **RELIEF REQUESTED**

Claimant requested unspecified damages.

Knight requested that Claimant's requests for relief be denied in their entirety, and that the Panel award Knight such other and further relief as the Panel deems appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the hearings in this matter, the Panel granted Trimark's Motion to Dismiss.

Claimant requested that the hearing location be moved to Florida. The panel denied such request.

After the hearing in this matter, Claimant also requested a "teleconference" to question Knight's witness on the number of violations allegedly committed by Knight with respect to Claimant's orders. The panel has denied this request.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Knight be and hereby is solely liable for and shall pay to Claimant the sum of \$6,990.50 as compensatory damages, without interest.
2. Each party shall bear its own expenses.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 250.00
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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 person at the time of the events giving rise to the dispute. In this matter, Knight Securities, Inc. and Trimark Securities, L.P. are parties.

#### **Knight Securities, Inc.**

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

#### **Trimark Securities, L.P.**

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

### **Adjournment Fees**

Adjournments requested during these proceedings:

February 13, 14 & 15, 2001, adjournment by Claimant	= WAIVED
May 8, 2001, adjournment by Claimant	= \$1,000.00

### **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 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 x \$450.00	= \$ 450.00
Pre-hearing conference: November 21, 2000 1 session	

Three (3) Pre-hearing sessions with Panel x \$1,000.00	= \$3,000.00
Pre-hearing conferences: July 24, 2000 1 session	
August 9, 2000 1 session	
December 5, 2000 1 session	

Six (6) Hearing sessions x \$1,000.00	= \$6,000.00
Hearing Dates: April 12, 2001 2 sessions	
April 16, 2001 2 sessions	
August 27, 2001 2 sessions	

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Total Forum Fees	= \$9,450.00
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1. The Panel has assessed \$4,725.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,725.00 of the forum fees against Knight.

### **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.

1. Claimant, requested tapes, \$120.00.
2. Knight, requested tapes, \$120.00.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,000.00
Forum Fees	= \$4,725.00
<u>Administrative Costs</u>	<u>= \$ 120.00</u>
Total Fees	= \$6,095.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,295.00

2. Knight be and hereby is solely liable for:

Member Fees	= \$3,800.00
Forum Fees	= \$4,725.00
<u>Administrative Costs</u>	<u>= \$ 120.00</u>
Total Fees	= \$8,645.00
<u>Less payments</u>	<u>= \$6,520.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,125.00

3. Trimark be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$3,800.00</u>
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$1,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,600.00

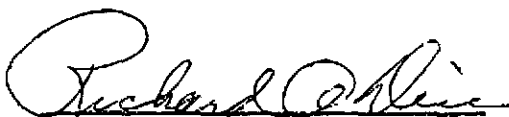
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Richard A. Dice, Esq.	-	Public Arbitrator, Presiding Chair
Myron Kove, Esq.	-	Public Arbitrator
Joseph D. Cosgrove, Esq.	-	Industry 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.



Richard A. Dice, Esq.  
Public Arbitrator, Presiding Chair

11-28-01  
Signature Date

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Myron Kove, Esq.  
Public Arbitrator

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Signature Date

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Joseph D. Cosgrove, Esq.  
Industry Arbitrator

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Signature Date

November 29, 2001  
Date of Service (For NASD office use only)

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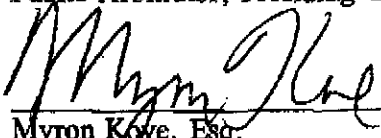
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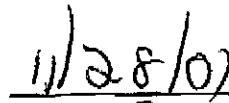
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