

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Harcharan Singh

Case No. 99-02485

Names of Respondents

Syed Ahsan Naqvi
Martin Marvin Berk
Mohammad Ali Khan
William Oakleigh Triebel
John Joseph Svatek
Asim S. Kohli
Steven R. Jacobson
William Walling
Klein, Maus & Shire, Inc.

REPRESENTATION OF PARTIES

For Claimant: David Liebrader, Esq. of The Law Offices of David Liebrader, Irvine, CA.

For Respondent Syed Ahsan Naqvi ("Naqvi"): Wayne S. Cook, Jr., Esq. of Brief Justice Schulman Carmen Kesselman & Kleiman, LLP, New York, NY. Mr. Cook withdrew as counsel on or about June 15, 2000. Thereafter, Respondent Naqvi appeared pro se.

Respondent Marvin Martin Berk ("Berk") did not appear.

Respondent Mohammad Ali Khan ("Khan") did not appear.

For Respondent William Oakleigh Triebel ("Triebel"): Adam Silverstein, Esq. of the Law Offices of Adam Silverstein, P.C., New York, NY.

Respondent John Joseph Svatek ("Svatek") appeared pro se.

For Respondent Asim S. Kohli ("Kohli"): Richard J. Blumberg, Esq. of McLaughlin & Stern, LLP, New York, NY.

For Respondent Steven R. Jacobson ("Jacobson"): George Brunelle, Esq. of the Law Offices of George Brunelle, New York, NY.

For Respondent William Walling ("Walling"): Jamie M. Brickell, Esq. of Pryor Cashman Sherman & Flynn, LLP, New York, NY.

Respondent Klein, Maus & Shire, Inc. ("KMS") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: May 28, 1999.

Claimant signed the Uniform Submission Agreement: May 19, 1999.

Statement of Answer and Motion to Dismiss filed by Respondent Kohli on or about: October 11, 1999.

Statement of Answer and Cross-Claim filed by Respondent Naqvi on or about: December 15, 1999.

Statement of Answer and Cross-Claim filed by Respondent Triebel on or about: October 25, 1999.

Statement of Answer filed by Respondent Jacobson on or about: September 20, 1999.

Statement of Answer to Respondent Triebel's Cross-Claim filed by Respondent Jacobson on or about: December 22, 1999.

Statement of Answer to Respondent Naqvi's Cross-Claim filed by Respondent Jacobson on or about: December 22, 1999.

Respondent Naqvi signed the Uniform Submission Agreement: December 13, 1999.

Respondent Triebel signed the Uniform Submission Agreement: June 8, 1999.

Respondent Jacobson signed the Uniform Submission Agreement: September 17, 1999.

Respondents Berk, Khan, Svatek, Walling, and KMS did not file Statements of Answer (see "Other Issues").

Respondents Berk, Khan, Svatek, Kohli, Walling, and KMS did not file Uniform Submission Agreements (see "Other Issues").

CASE SUMMARY

Claimant alleged the following: Claimant was provided with an incomplete and defective private placement memorandum which purported to describe the value of an investment in shares of KMS. Claimant purchased 33,333 shares of KMS. This purchase of KMS shares was in violation of Louisiana law because KMS did not register the shares in Louisiana and there was no exemption which would allow the shares to be sold in Louisiana. Claimant was unaware that the sale of the shares in Louisiana was prohibited. Claimant relied upon Naqvi and KMS to provide this information to him. Naqvi breached his fiduciary duty to Claimant by misrepresenting KMS' prospects and financial health. KMS failed to properly supervise Naqvi. Respondents fraudulently misled Claimant regarding KMS to induce Claimant to invest in the private placement. Respondents were negligent in the handling of Claimant's investments. Respondents violated sections 12(1), 12 (2), and 15 of the 1933 Securities Act and Rule 10b-5 of the 1934 Exchange Act. Claimant was damaged as a result of the foregoing actions of Respondents.

Unless specifically admitted in his Answer, Respondent Naqvi denied the allegations made in the Statement of Claim and alleged the following: Claimant knowingly authorized and directed every transaction in his KMS account. Claimant proceeded with every transaction after being accurately and fully advised by Naqvi of the risks and rewards. Claimant was fully apprised of the inherent risks of the private placement by Naqvi and was provided with a copy of the private placement memorandum.

Respondent Naqvi asserted a cross-claim against Respondents Berk, Khan, Triebel, Svatek, Kohli, Jacobson, Walling, and KMS which alleged the following: Naqvi was not a registered principal or control person while employed by KMS. Naqvi acted under the supervision or control of the other Respondents and relied upon the information provided to him by the support staff of KMS. Any duty that was breached was the sole responsibility of the officers, directors, and control personnel of KMS.

Unless specifically admitted in his Answer, Respondent Triebel denied the allegations made in the Statement of Claim and alleged the following: Triebel became chief financial officer of KMS in July 1997. However, the transaction at issue occurred on May 15, 1996 prior to Triebel being hired by KMS. Triebel had no involvement in the purchase of the private placement shares by Claimant.

Respondent Triebel asserted a cross-claim against Respondents Naqvi, Berk, Khan, Svatek, Kohli, Jacobson, Walling, and KMS which alleged the following: If any of the Respondents are found liable to Claimant, those Respondents alone must be held liable because Triebel is not responsible for any of their acts or omissions. If Triebel is found to be liable to Claimant because of the acts or omissions of any Respondent, that Respondent shall indemnify Triebel completely for the full award that is entered against Triebel.

Unless specifically admitted in his Answer, Respondent Kohli denied the allegations made in the Statement of Claim and alleged the following: Kohli had no responsibility or authority with respect to the sales staff employed by KMS. Kohli had no direct or indirect contact with or involvement in either the Claimant's account or the offering of the securities complained of in the Statement of Claim. Kohli has never been registered with the National Association of Securities Dealers, Inc.

Unless specifically admitted in his Answer, Respondent Jacobson denied the allegations made in the Statement of Claim and Respondents Naqvi and Triebel's cross-claims and alleged the following: Jacobson had no responsibility or authority with respect to the management of KMS' business. Jacobson had no direct or indirect contact with, involvement in, or knowledge of, either the Claimant's account or the offering of the securities complained of in the Statement of Claim.

RELIEF REQUESTED

Claimant requested rescission of the KMS investment or, alternatively, compensatory damages

of \$100,000.00, punitive and exemplary damages, pre- and post-award interest, costs, attorneys' fees, and any other costs deemed reasonable.

Respondent Naqvi requested that the Statement of Claim be dismissed and that a decision be entered in his favor on all cross-claims for contribution and indemnity.

Respondent Triebel requested that the Statement of Claim be dismissed, that a decision be entered in his favor on all cross-claims for contribution and indemnity, and for such other and further relief as the Panel deemed just and equitable.

Respondent Kohli requested that the Statement of Claim be dismissed.

Respondent Jacobson requested that all references to this proceeding be stricken from Jacobson's regulatory records including those maintained by the NASD Central Registration Depository ("CRD"), and that he be awarded his costs, attorneys' fees, and such other and further relief as the arbitrators deemed just and proper. Respondent Jacobson also requested that Respondents Naqvi and Triebel's cross-claims be dismissed, and for such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 28, 2000, the Claimant informed NASD Dispute Resolution, Inc. that he had dismissed all claims against Respondent Jacobson with prejudice.

On or about January 14, 2000, the Claimant informed NASD Dispute Resolution, Inc. that he had dismissed all claims against Respondent Walling without prejudice.

On or about May 31, 2000, the Claimant informed NASD Dispute Resolution, Inc. that he had dismissed all claims against Respondent Triebel with prejudice.

On or about November 11, 1999, Respondent Kohli filed his Statement of Answer and Motion to Dismiss. Claimant did not file a response to the motion to dismiss. On or about May 15, 2000, the Panel granted Respondent Kohli's motion to dismiss.

Respondents Berk, Khan, Svatek, and KMS did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators determined that Respondents Berk, Khan, Svatek, and KMS have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

Respondents Berk, Khan, Svatek, Walling, and KMS did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues

submitted.

The parties present at the evidentiary hearing 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:

Respondents Berk, Khan, and KMS are liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$100,000.00 plus interest compounded annually at the rate of eight percent (8%) per annum accruing from June 1, 1996 until the date of payment of the Award.

Respondents Berk, Khan, and KMS are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the sum of \$15,000.00 pursuant to La. R.S. section 51:714.

Respondents Berk, Khan, and KMS are liable, jointly and severally, and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

Respondents Berk, Khan, and KMS are liable, jointly and severally, and shall pay to Claimant costs in the sum of \$1,425.00.

Claimant's requests for rescission of the KMS investment and punitive and exemplary damages are denied.

All claims against Respondents Naqvi and Svatek are dismissed.

Respondents Naqvi and Triebel's cross-claims are denied as moot.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Jacobson's registration records maintained by the NASD CRD, with the understanding that pursuant to the NASD Notice to Members 99-09, Respondent Jacobson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

All other requests for relief not specifically addressed herein are 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	= \$ 300.00
Respondent Naqvi's Cross-claim filing fee	= \$ 300.00
Respondent Triebel's Cross-claim filing fee	= \$ 300.00

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, KMS, is a party.

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

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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 12, 2000 1 session	

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: January 11, 2000 1 session	
February 17, 2000 1 session	

Two (2) Hearing sessions x \$1,125.00	= <u>\$2,250.00</u>
Hearing Date: June 26, 2000 2 sessions	

Total Forum Fees	= \$4,950.00
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The Panel has assessed the total forum fees of \$4,950.00 jointly and severally to Respondents Berk, Khan, and KMS.

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.

Respondent Naqvi requested a copy of the file in this matter at a cost of \$27.50	= \$ 27.50
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Fee Summary

Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent KMS be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

Respondent Naqvi be and hereby is solely liable for:

Cross-Claim Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 27.50
Total Fees	= \$ 327.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 327.50

Respondent Triebel be and hereby is solely liable for:

<u>Cross-Claim Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

Respondents Berk, Khan, and KMS be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,950.00
Total Fees	= \$4,950.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,950.00

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

Concurring Arbitrators' Signatures

/s/

Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/

Carlie M. Kahn
Public Arbitrator

Signature Date

/s/

Earl S. Eichen, Jr., Esq.
Industry Arbitrator

Signature Date

August 7, 2000

Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

Ashley L. Belleau

Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chair

8-7-00

Signature Date

Carlie M. Kahn
Public Arbitrator

Signature Date

Earl S. Eichin, Jr., Esq.
Industry Arbitrator

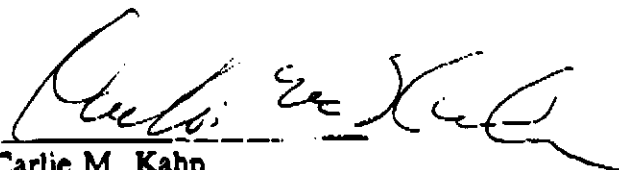
Signature Date

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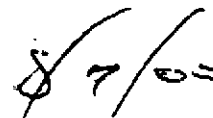
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Public Arbitrator



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Ashley L. Belleau, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Carlie M. Kahn
Public Arbitrator

Signature Date



Earl S. Eichen, Jr., Esq.
Industry Arbitrator

Aug. 7, 2000

Signature Date

Date of Service (For NASD-DR office use only)