

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Michael J. Norton

and

99-02806

Name of Respondent

John G. Kinnard & Company, Inc.

REPRESENTATION OF PARTIES

Michael J. Norton ("Claimant") was represented by Denis E. Grande, Esq. and Joanne H. Turner, Esq., Mackall Crounse & Moore, PLC, Minneapolis, Minnesota.

John G. Kinnard & Company, Inc. ("Respondent") was represented by Marko J. Mrkonich, Esq. and Chad W. Strathman, Esq., Littler Mendelson, P.C., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about June 21, 1999. Submission Agreement of Claimant Michael J. Norton was undated.

Statement of Answer was filed by Respondent John G. Kinnard & Company, Inc. on or about September 13, 1999. Submission Agreement of Respondent John G. Kinnard & Company, Inc. was signed on September 10, 1999 by George Stroebl.

CASE SUMMARY

Claimant alleged that Respondent exercised and sold warrants without his permission and in violation of his separation agreement by misallocating the warrants.

Respondent John G. Kinnard & Company ("Kinnard"), submitted the following case summary:

Until May of 1997, Kinnard employed Complainant Michael J. Norton ("Norton") in its corporate finance department. As part of his compensation, Kinnard granted Norton a right to certain proceeds from different warrants held by Kinnard. When Norton resigned his position, he executed a Separation Agreement stating that he would not forfeit his interests

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in proceeds from warrants already earned. Norton brings two contract claims related to his entitlement to certain warrant proceeds. Both are entirely baseless.

Norton's first claim is that Kinnard had an obligation to notify him and seek his approval before exercising its Possis and Sparta Foods warrants. Nothing in the governing Warrant Plan (drafted by Norton) requires Kinnard to obtain prior approval from employees before exercising its warrants. In fact, in a memorandum authored by Norton, he admits that decisions to exercise Kinnard warrants were to be made by the Kinnard's investment committee subject to approval by the CEO. Under the express terms of the warrants themselves, Kinnard is the sole owner of the warrants. As Norton has no ownership of the warrants, he cannot dictate the terms by which they are exercised.

Norton's second claim is that he is entitled to a pro rata share of certain allocations forfeited by other Kinnard employees. His Separation Agreement states that he retained rights to warrants from offerings completed prior to his resignation. Any such rights, however, remain governed by the Warrant Plan (drafted by Norton). To be eligible for reallocation, the Warrant Plan expressly states that Kinnard must employ the person at the time of the reallocation. The reallocations in question all took place after Norton's resignation. Moreover, the Plan expressly states that Kinnard's CEO and Director of Corporate Finance have absolute discretion over any reallocation. Because of this discretion, even if otherwise eligible to receive reallocations, Norton has no right to require that Kinnard reallocate anything to him.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested the following relief:

A. Kinnard Warrant Plan.

Because JGK exercised and sold two of my warrant positions in 1999 without my required permission, I request to be made whole on the wrongful exercise of the Possis Medical and Sparta Foods warrants. The additional amount requested for the Possis warrant is \$10,294.10 and the additional amount requested for the Sparta warrant is \$16.89. Total damages requested are \$10,310.99.

B. Separation Agreement.

I request to be allocated my pro-rata share of the warrants earned but forfeited by the separation/termination of each of Mr. Joseph Radecki, Mr. Jerry Johnson and Mr. Brett Stenberg. These warrants were wrongfully allocated in 1997, 1998 and possibly 1999, in violation of the 1995 amendment to

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C. Expenses.

the Kinnard Warrant plan and my separation agreement.

I request that JGK reimburse me for all of the expenses I have incurred in the arbitration process. I estimate that the expenses will be approximately \$2,000.00-\$5,000.00.

Respondent requested an award granting the following relief:

- A. Dismissing Norton's pretended causes of action with prejudice in their entirety and on the merits;
- B. Finding that Kinnard acted properly in exercising its warrants to Sparta Foods and Possis Medical, and that it properly paid Norton all amounts due and owing for any economic interest he may have had in those warrants;
- C. Finding that Norton is not entitled to any warrants forfeited after termination of employment;
- D. Awarding Kinnard its costs, including reasonable attorneys' fees and arbitration expenses; and
- E. Awarding such other relief as the Arbitrators deem just and appropriate.

AWARD

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

Claimant shall have judgement against John G. Kinnard & Company, Inc. as follows:

1. \$16.89 plus interest at 6% from February 2, 1999, as to the Sparta warrants, \$10,294.10 plus interest at 6% from March 4, 1999, as to the Possis warrants.
2. In addition, Claimant is awarded the warrants which had been allocated to him at the time he left Respondent's employment.
3. At such time as Respondent decides to exercise any of its warrants, Claimant shall be notified and shall be allowed to decide whether he also desires to exercise any or all of his warrants and whether he desires to sell the underlying stock.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

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5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$125.00

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 is John G. Kinnard & Company, Inc.

Member surcharge = \$400.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$450.00
Pre-hearing conference(s): January 7, 2000 1 session

Seven (7) Hearing sessions x \$450.00 = \$3,150.00
Hearing Date(s): April 17, 2000 2 sessions
April 18, 2000 2 sessions
April 19, 2000 1 session
May 24, 2000 1 session
June 19, 2000 1 session

Total Forum Fees = \$3,600.00

The Arbitrator has assessed \$3,600.00 of the forum fees to John G. Kinnard & Company, Inc.

06/30/00 FRI 10:13 FAX

NASD REGULATION

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Fee Summary

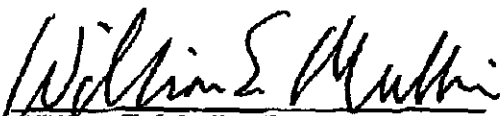
Claimant, Michael J. Norton, shall be and hereby is liable for:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 125.00
<u>Less payments</u>	= \$ 675.00
Balance to be refunded by NASD Regulation, Inc.	= \$ 450.00

Respondent, John G. Kinnard & Company, Inc., shall be and hereby is liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 4,000.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Regulation, Inc.	= \$ 3,600.00

All balances are due to NASD Regulation, Inc.


William E. Mullin, Esq.
Public Arbitrator, Presiding Chair

Dated:

6-30-2000