

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Raymond Koren,
Claimant

Vs.

Case Number: 99-04380
Hearing Site: Cleveland, Ohio

Dalton Kent Securities Group, Inc.,
Coleman and Company Securities, Inc., and
Andrew J. Fernholz,
Respondents.

REPRESENTATION OF PARTIES

Claimant/Counter-Respondent, Raymond Koren ("Koren"), was represented by Roger W. VanDeusen, Esquire, of Chattman, Gaines & Stern, Cleveland, Ohio.

Respondent, Dalton Kent Securities Group, Inc. ("Dalton Kent"), was represented by David Hoffner, Esquire, of Swidler Berlin Shereff Friedman, LLP, New York, New York.

Respondent/Counterclaimant/Cross-Claimant, Coleman and Company Securities, Inc., ("Coleman") was represented by Michael H. Ference, Esquire, of Sichenzia, Ross & Friedman, New York, New York.

Though initially represented by counsel, Respondent/Cross-Respondent, Andrew J. Fernholz ("Fernholz"), was not represented by counsel at the hearing, nor did he appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about September 28, 1999.
Raymond Koren signed the Uniform Submission Agreement on September 20, 1999.

Respondent Dalton Kent filed its Statement of Answer on or about January 12, 2000.

Alan Elher, Chief Executive Officer of Respondent Dalton Kent, signed the Uniform Submission Agreement on January 7, 2000.

Respondent Coleman filed its Statement of Answer, Motion to Dismiss and Cross-Claim against Andrew J. Fernholz on or about December 27, 1999.

On or about December 27, 1999, Respondent Coleman filed its Uniform Submission Agreement, signed by Philip C. Puccio, Sr.

Respondent Coleman filed its Counterclaim on or about June 19, 2000.

Respondent Fernholz filed his Statement of Answer on or about March 10, 2000.

Respondent Fernholz did not sign the Uniform Submission Agreement.

Claimant filed his Reply to Respondent Coleman's Counterclaim on or about June 30, 2000.

Respondent Fernholz did not reply to Respondent Coleman's Cross-Claim against him.

CASE SUMMARY

Claimant alleged the following in the Statement of Claim: breach of contract, fraud, failure to supervise and conversion. The allegations were related to transactions involving the following common stocks: PSINET, Inc., Shop at Home, Inc., Ticketmaster Online, Compaq Computer Corp. and Global Crossing, Inc.

Unless otherwise stated in its Statement of Answer, Respondent Dalton Kent denied the allegations contained in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief may be granted, contributory negligence, estoppel, waiver, laches, ratification and failure to mitigate.

Unless otherwise stated in its Statement of Answer, Respondent Coleman denied the allegations contained in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim with sufficient particularity, failure to state a claim upon which relief may be granted, laches and failure to mitigate.

Unless otherwise stated in his Statement of Answer, Respondent Fernholz denied the allegations contained in the Statement of Claim and asserted the following affirmative defenses: assumption of the risk, failure to state a claim upon which relief may be granted, waiver, estoppel, ratification, failure to mitigate and unclean hands.

In its Counterclaim, Respondent Coleman alleged the following against Claimant: abuse of process.

In its Cross-Claim, Respondent sought indemnification from Respondent Fernholz should it be found liable to Claimant.

Unless otherwise stated in his Reply to Counterclaim, Claimant denied the allegations contained in the Counterclaim and asserted the following affirmative defenses: failure to state a claim upon which relief may be granted and untimely filing.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$300,373.00
Punitive Damages	unspecified

Respondent Coleman requested in its Counterclaim:

Punitive Damages	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

And in its Cross-Claim:

Indemnification

Respondents Dalton Kent, Coleman and Fernholz each requested that all claims against them be dismissed in their entirety. Respondent Fernholz also requested attorneys' fees of not less than \$15,000.

OTHER ISSUES CONSIDERED AND DECIDED

On April 17, 2001, the undersigned Panel denied Respondent Coleman's Motion to Dismiss.

Upon review of the file and the representations made by/on behalf of the Claimant, a majority of the undersigned arbitrators determined that Respondent Andrew J. Fernholz received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Fernholz not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for their determination as follows:

1. Respondent Dalton Kent Securities Group, Inc., is solely liable for, and shall pay to Claimant, the sum of \$35,000.00 (Thirty-five Thousand Dollars and No Cents) in Compensatory Damages.
2. Respondent Dalton Kent Securities Group, Inc., is solely liable for, and shall pay to Claimant, the sum of \$10,000.00 (Ten Thousand Dollars and No Cents) in Attorneys' Fees. The Panel has determined, after considering the pleadings and the arguments of the parties, that it has the authority to award Attorneys' Fees.
3. Respondent Andrew J. Fernholz is solely liable for, and shall pay to Claimant, the sum of \$185,000.00 (One Hundred Eighty-five Thousand Dollars and No Cents) in Compensatory Damages.
4. Respondent Andrew J. Fernholz is solely liable for, and shall pay to Claimant, the sum of \$25,000.00 (Twenty-five Thousand Dollars and No Cents) in Attorneys' Fees. The Panel has determined, after considering the pleadings and the arguments of the parties, that it has the authority to award Attorneys' Fees.
5. Claimant's claims against Respondent Coleman and Company Securities, Inc., are dismissed with prejudice.
6. Respondent (and Counterclaimant) Coleman's Counterclaim against Claimant is dismissed with prejudice.
7. Respondent (and Cross-Claimant) Coleman's Cross-Claim against Respondent Andrew J. Fernholz is dismissed with prejudice.
8. No Punitive Damages are awarded to any party in these proceedings.
9. Except as specified otherwise herein, each party shall bear its own costs and attorneys' fees.
10. Any and all relief not expressly awarded herein is 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	= \$ 300
Cross-Claim/Counterclaim filing fee	= \$ 500

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Dalton Kent Securities Group, Inc., and Coleman and Company Securities, Inc.

Member surcharges	= \$1,500
Pre-hearing process fees	= \$ 600
Hearing process fees	= \$2,500

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:

Two (2) Pre-hearing conferences with Panel x \$1,125	= \$2,250
Pre-hearing conferences: January 24, 2001	1 session
April 2, 2001	1 session
Five (5) Hearing sessions x \$1,125	= \$5,625
Hearing Dates: May 9, 2001	2 sessions
May 10, 2001	3 sessions
Total Forum Fees	= \$7,875

The Panel has assessed \$2,625 in Forum Fees solely to Respondent Dalton Kent Securities Group, Inc. The Panel has assessed the remaining \$5,250 in Forum Fees solely to Respondent Andrew J. Fernholz.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300
Total Fees	= \$ 300
Less payments	= \$ 1,425
Balance Due from NASD Dispute Resolution, Inc.	= \$(1,125)

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2. Respondent Dalton Kent Securities Group, Inc., be and hereby is solely liable for:

Forum Fees	= \$ 2,625
<u>Member Fees</u>	<u>= \$ 4,600</u>
Total Fees	= \$ 7,225
<u>Less Payments</u>	<u>= \$ 4,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,625

3. Respondent Coleman and Company Securities, Inc., be and hereby is solely liable for:

Counterclaim/Cross-Claim Filing Fee	= \$ 500
<u>Member Fees</u>	<u>= \$ 4,600</u>
Total Fees	= \$ 5,100
<u>Less payments</u>	<u>= \$ 3,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500

4. Respondent Andrew J. Fernholz be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 5,250</u>
Total Fees	= \$ 5,250
<u>Less Payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,250

All balances are due to NASD Dispute Resolution, Inc.

Concurring in the entire Award:

Arthur S. Leb, Esq.
Public Arbitrator

Signature Date

Henry V. Kerr
Henry V. Kerr, Esq.
Non-Public Arbitrator

8 - 13 - 01
Signature Date

Dissenting Opinion:

While I concur in entering this Award, I must dissent regarding the hearing procedures taken with respect to Respondent Andrew J. Fernholz.

Respondent Fernholz did not file a Uniform Submission agreement. Though initially represented by counsel, his attorney withdrew his representation prior to the service of any notice of the time and location of the hearing.

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2. Respondent Dalton Kent Securities Group, Inc., be and hereby is solely liable for:

Forum Fees	= \$ 2,625
<u>Member Fees</u>	<u>= \$ 4,600</u>
Total Fees	= \$ 7,225
<u>Less Payments</u>	<u>= \$ 4,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,625

3. Respondent Coleman and Company Securities, Inc., be and hereby is solely liable for:

Counterclaim/Cross-Claim Filing Fee	= \$ 500
<u>Member Fees</u>	<u>= \$ 4,600</u>
Total Fees	= \$ 5,100
<u>Less payments</u>	<u>= \$ 3,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500

4. Respondent Andrew J. Fernholz be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 5,250</u>
Total Fees	= \$ 5,250
<u>Less Payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,250

All balances are due to NASD Dispute Resolution, Inc.

Concurring in the entire Award:



Arthur S. Leb, Esq.
Public Arbitrator

8/9/2001

Signature Date

Henry V. Kerr, Esq.
Non-Public Arbitrator

Signature Date

Dissenting Opinion:

While I concur in entering this Award, I must dissent regarding the hearing procedures taken with respect to Respondent Andrew J. Fernholz.

Respondent Fernholz did not file a Uniform Submission agreement. Though initially represented by counsel, his attorney withdrew his representation prior to the service of any notice of the time and location of the hearing.

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Notice of the time and location of the hearing was mailed by NASD Dispute Resolution, Inc. to Respondent Fernholz at his last known address, and was returned by the post office without having been delivered.

The Majority of the Panel has found that Respondent Fernholz received sufficient notice of the time and location of the hearing.

I vehemently disagree.

The Award against Respondent Fernholz may well have been the same even if he had attended the hearing. But even should he elect not to appear, equity demands that he be given due process in the form of proper notice of the time and location of the hearing.

I respectfully dissent.

Concurring in the Award, except for any portion thereof awarding relief against Respondent/Cross-Respondent Andrew J. Fernholz. The chairperson dissents from this portion of the Award only:


George P. Doom
Public Arbitrator, Presiding Chair

8-8-2001
Signature Date

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