



Client's estate wins \$10M arbitration against clearing firm C.L. King

By Andrew Welsch

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A client's estate won a hefty \$10 million arbitration award against C.L. King & Associates for alleged misrepresentation, breach of fiduciary obligations and negligent supervision among other misconduct, according to a copy of the award.

The win is the latest in a series of lengthy FINRA arbitration cases stemming from the fallout from the collapse of NSB Advisors, a RIA that filed for bankruptcy last year and which once used C.L. King as a clearing and custody firm, according to court documents.

NSB Advisors and C.L. King are in the midst of their own arbitration battle against one another; the RIA's owner blames his former clearing firm for the collapse of his firm, which C.L. King denies. Meanwhile, some of the clients seeking damages against C.L. King – and who filed claims as early as 2013 – didn't live to see the conclusion of their cases.

In this recent arbitration case, the estate of former client John Montfort sought damages for alleged misconduct related to a hedging strategy employed by NSB Advisors, according to the client's attorney.

"The strategy was much riskier than it was disclosed. They hid elements about the strategy and the accounts specifically," says Ross Intelisano, a lawyer at New York-based Rich, Intelisano & Katz.

He adds: "It's rare to have an arbitration award against a clearing firm because often clearing firms are solely executing and clearing transactions. But here, C.L. King played a much larger role."

(Image: Bloomberg News)



LENGTHY PROCESS

Montfort's arbitration case lasted over 88 hearings during three years – Intelisano says one of the arbitrators died during the process. Montfort died in 2011, Intelisano says. And Montfort's wife, who also filed claims against C.L. King, died earlier this year, according to a copy of the arbitration award.

An attorney for C.L. King says in an email that the firm disagrees with the panel's ruling and further "denies that there was any regulatory violation, nor was any demonstrated by claimants." Christopher Robertson, a lawyer with Boston-based Seyfarth Shaw, says that the client "received monthly statements showing the account's decline over many months and never once contacted the firm."

Robertson notes, however, that the panel awarded less than the roughly \$47 million in damages, attorney's fees, costs and pre-judgment interest that Montfort's estate asked for at the end of arbitration hearings.

C.L. King, which is based in Albany, N.Y., won a related case brought by John Montfort's wife, Beverly, according to a copy of the panel's ruling. The same three arbitrators served on both panels.

Mrs. Montfort, who also had accounts with NSB Advisors that were custodied with C.L. King, sought about \$3.2 million for misrepresentation and other misconduct. Intelisano, who also represented Mrs. Montfort in arbitration, declined to comment on that case.

TROUBLED RELATIONSHIP

Meanwhile, C.L. King is seeking damages against William Nicklin, the owner of the defunct NSB Advisors; those claims are pending, according to Robertson. Nicklin's attorney, Steven Shore of New York law firm Ganfer & Shore, declined to comment on the ongoing arbitration.

Nicklin started his advisory career in 1967 with Alex. Brown, according to FINRA BrokerCheck records. He later worked for UBS and Brown Advisory Services, leaving that firm in 2009, per BrokerCheck records.

NSB Advisors, which he founded that same year in Fishkill, N.Y., declared bankruptcy in 2015, according to court documents filed by Nicklin. NSB contracted with C.L. King to provide technical resources for the firm as well as custody and brokerage services to NSB's clients, according to the documents.

In 2012, the firm had more than 700 client accounts and managed over \$1.2 billion in client assets, according to court documents.

In the court documents, Nicklin alleged that C.L. King misrepresented its financial position. In early 2012, C.L. King asked NSB to reduce its clients' collective combined debit balances by \$231 million, and then in April asked NSB to transfer its top 10 accounts to a new custodian, according to court documents. Nicklin claimed that request was "logistically impossible" in the timeframe C.L. King requested, and which is not specified in the court documents. In May, the firm sent letters to NSB clients.

In May 2012, C.L. King sent letters to his clients notifying them of changes to C.L. King policies with regard to NSB-managed accounts while also "urging them to move their accounts out of C.L. King," Nicklin alleged.

"C.L. King was aware that the many arrangements NSB had to put in place to transition its accounts were not yet ready, and that urging clients to leave C.L. King was tantamount to urging them to leave NSB," he said.

When NSB filed for bankruptcy two years later, its AUM had dropped to \$143 million, according to court documents.

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C.L. King denies Nicklin's allegations. Robertson, the firm's attorney, says Nicklin's "statements are completely untrue."

In August 2013, the two sides filed arbitration claims against one another.

Montfort's estate also filed its claims for damages that same year. In addition to rejecting his claims, C.L. King also asked the panel for \$6 million in damages for breach of brokerage account agreement. The panel rejected those claims as part of its ruling, according to a copy of the award. The arbitrators did not explain their decision, as is customary.

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