



# Ex-RIA owner loses \$13M arbitration to broker-dealer C.L. King

By Andrew Welsch

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A broker-dealer's \$13 million arbitration win against an ex-RIA owner is a stark example of how complex business relationships can turn adversarial — sometimes leading to years of legal wrangling by firms and burned clients as well as bankruptcy.

The length of the arbitration dispute makes it even more distinctive: The case lasted for 142 hearing sessions stretching from 2013 to 2016.

"I don't see too many cases that stretch on for 70 days," says James Eccleston, a Chicago-based attorney who was not involved in this arbitration dispute.

This was the most recent bout in an ongoing series of legal battles stemming from a failed investment strategy and the contentious relationship between former business partners C.L. King & Associates and William Nicklin, owner of NSB Advisors.

This particular round is important because there's a lot at stake for the participants; in a previous case a client won a \$10 million arbitration award against C.L. King. But in addition recouping losses through arbitration wins, the disputes also show how business partnerships can fall apart for unexpected reasons, even those between veteran advisers and established firms.

In the latest case, C.L. King sought damages for breach of contract against Nicklin regarding his personal brokerage account at the firm, according to arbitration documents. The suit does

not apply to accounts he managed on behalf of his clients.

**Read more: [Client's estate wins \\$10M arbitration against clearing firm C.L. King](#)**

### **'EXTREMELY SOPHISTICATED, YET RISKY'**

Nicklin is a veteran adviser, having begun his career at Alex. Brown in 1967, according to FINRA BrokerCheck.

He started NSB Advisors in Fishkill, New York, in 2009. Nicklin then entered into an agreement with C.L. King to provide technical resources to NSB and custody and brokerage services to its clients, according to court documents he filed when the RIA declared bankruptcy in 2015.

Nicklin allegedly pursued an aggressive strategy in his personal account that relied heavily on the use of margin calls, C.L. King said in arbitration.

"Essentially, Mr. Nicklin's investment strategy was to maintain core holdings of long equity positions with a hedge provided by the spread of index option positions. Mr. Nicklin's strategy, through the use of margining the long positions and leveraging the short positions, was an extremely sophisticated, yet risky strategy," the firm told arbitrators.

Nicklin allegedly pursued a similar strategy in his clients' accounts, according to the firm and people familiar with the ongoing dispute between the parties.

Nicklin said in arbitration documents that C.L. King knew that he and many NSB clients "followed the same investment strategies and purchased the same securities after May 2009 when NSB's services agreement with C.L. King was entered into, since it was the NSB customers' broker."



According to court documents, NSB Advisors had more than 700 client accounts and managed over \$1.2 billion in assets in 2012.

Albany, New York-based C.L. King says NSB Advisors managed accounts at the firm that held large debit balances and concentrations in stocks of two companies. C.L. King says it was concerned about risk factors and asked NSB Advisors to adjust its debit balances.

In January 2012, the C.L. King's CFO emailed Nicklin that his concentrated debit positions exceeded 25% of the firm's net capital. He also told Nicklin he had to decrease his large margin positions to take pressure off of C.L. King's funding lines, the firm told arbitrators.

C.L. King further says that Nicklin failed to take care of margin calls against his personal account, despite repeated calls and emails from the firm. His account's value plummeted from about \$55 million in December 2011 to \$15 million in April 2012, according to C.L. King, which liquidated it on May 15, 2012. The firm says it was forced to cover a shortfall of \$13 million.

The firm says that customer agreement forms and other documents clearly stipulated that the firm had the right to liquidate assets to cover margin calls and that clients are responsible for covering any shortfalls that occur.

**UNCLEAN HANDS?**

Steven Shore, an attorney at Gafner & Shore who represented Nicklin in arbitration, declined to comment on the case.

Nicklin denied C.L. King's allegations, according to arbitration documents.

He alleged that C.L. King's claims were barred in part because of the firm's actions against NSB Advisors' client accounts, which "prevented Nicklin, a manager of NSB, from being able to sell long positions in the Nicklin Account," according to arbitration documents.

"C.L. King knew, or should have known, that Nicklin, as a manager of NSB, could not trade ahead of NSB's clients to get a better sale price, and that if Nicklin sold any of his long positions, his sales would influence the market by depressing the stocks and making it more difficult for his customers to sell their securities," Nicklin said in arbitration documents.

Among other allegations, Nicklin says that C.L. King inconsistently enforced margin and maintenance requirements against NSB clients' accounts. He also says that C.L. King sold the securities in his personal account at a 20% discount to Candace King, CEO of the firm, according to arbitration documents.

Richard Roth, a New York-based attorney who represented C.L. King, says that the securities had to be sold in order to meet a New York Stock Exchange call, and that the discount was the best and only offer on the table.

Nicklin asked the arbitration panel to deny the firm's claims and grant him \$51 million in monetary damages.

The panel rejected his claims and ruled in C.L. King's favor. Of the \$177,600 of hearing fees, the panel assigned all but \$600 to Nicklin. The arbitrators did not explain their ruling, as is customary.

"That sends a message," Roth says. "The panel issued the right decision."

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But while this case is over, other clients are pursuing damages against the firms, according to attorneys familiar with the cases.

Ross Intelisano, a New York-based attorney at Rich, Intelisano & Katz, says his firm is representing a client in one such case, but declined to discuss it in detail. His firm previously represented the estate of John Montfort, an ex-NSB client [who won a \\$10 million arbitration award](#) against C.L. King.

Of Nicklin's loss, Intelisano says "it's very hard for an investment adviser who had unclean hands and caused much of the problem to win an already difficult customer debit case. It's hard to separate the two."

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## Andrew Welsch

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