

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Edward A. Kaminsky and James Agate (Claimants) vs. Spencer Trask Securities, Inc.,
a/k/a Spencer Trask Ventures and Spencer Segura (Respondents)

Case Number: 00-05628

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Edward A. Kaminsky ("Kaminsky") *pro se* and James Agate ("Agate"), Arthur G. Jakoby Esq., Herrick, Fienstein LLP, New York, NY. Hereinafter collectively referred to as "Claimants." Kaminsky was represented by Arthur G. Jakoby Esq., Herrick, Fienstein LLP, New York, NY until August 25, 2003.

Respondent, Spencer Trask Securities, Inc., a/k/a Spencer Trask Ventures ("Spencer Trask"): Richard A. Roth, The Roth Law Firm, New York, NY. Previously represented by Barry Bordetsky, Littman, Krooks & Roth, New York, NY.

Respondent, Spencer Segura ("Segura"): by Stephen P. Younger, Esq., Patterson Belknap Webb & Tyler, New York, NY. Previously represented by George Burnelle, Brunelle & Hadjikow, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 9, 2001.

Claimant Kaminsky, signed the Uniform Submission Agreement: December 11, 2000.

Claimant Agate, signed the Uniform Submission Agreement: December 18, 2000.

Statement of Answer filed by Respondents, Segura and Spencer Trask on or about: March 23, 2001.

Respondent Segura signed the Uniform Submission Agreement: January 17, 2001.

Respondent Spencer Trask signed the Uniform Submission Agreement: March 21, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract and breach of fiduciary duties.

Claimants claim involved the following security: NextLevel communications.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants each requested:

1. In an amount to be determined at trial but not less than \$17,000,000 each with interest;
2. Punitive damages in the amount of \$5,000,000.00 each;
3. the costs and legal fees incurred in prosecuting this action and any and other relief which may deem to be just and proper.

Respondents demand judgment dismissing the Statement of Claim in its entirety, awarding attorneys' fees, costs and disbursements of this action.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of the Claimants case, at the hearing in this matter, Respondents Spencer Trask and Segura filed a Motion To Dismiss. The Panel denied the motion.

At the conclusion of the hearing, the Panel dismissed the claim against Spencer Trask.

The parties 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:

1. Segura is solely liable for and shall pay to Claimant Kaminsky the sum of \$294,000.00 as compensatory damages.
2. Segura is solely liable for and shall pay to Claimant Agate the sum of \$294,000.00 as compensatory damages.
3. Segura is solely liable for and shall pay to Claimant Kaminsky the sum of \$50,000.00 as punitive damages.
4. Segura is solely liable for and shall pay to Claimant Agate the sum of \$50,000.00 as

punitive damages.

5. Any and all relief not specifically addressed herein, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Spencer Trask is a party.

Member surcharge = \$3,600.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 29, 30, 31, 2002, February 27, 28, March 1, 2003 adjournment by
Spencer Trask and Segura = \$1,200.00

The Panel assessed \$600.00 against Spencer Trask

The Panel assessed \$600.00 against Segura

Forum Fees and Assessments

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

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$3,600.00

Pre-hearing conferences:	July 30, 2001	1 session
	November 16, 2001	1 session
	January 11, 2002	1 session

Fifty (50) Hearing sessions with Panel @ \$1,200.00 = \$60,000.00

Hearing Dates:	March 5, 2002	2 sessions
	March 6, 2002	2 sessions
	March 7, 2002	2 sessions
	May 29, 2002	2 sessions

May 30, 2002	2 sessions
May 31, 2002	2 sessions
June 27, 2002	2 sessions
June 28, 2002	2 sessions
August 8, 2002	2 sessions
September 23, 2002	2 sessions
September 24, 2002	2 sessions
October 23, 2002	2 sessions
October 24, 2002	2 sessions
October 29, 2002	2 sessions
December 7, 2002	2 sessions
February 3, 2003	2 sessions
February 4, 2003	2 sessions
February 10, 2003	2 sessions
February 11, 2003	2 sessions
April 8, 2003	2 sessions
April 9, 2003	2 sessions
April 10, 2003	2 sessions
June 16, 2003	2 sessions
June 17, 2003	2 sessions
July 31, 2003	2 sessions

Total Forum Fees = \$63,600.00

1. The Panel has assessed \$15,900.00 of the forum fees against Claimant Kaminsky.
2. The Panel has assessed \$15,900.00 of the forum fees against Claimant Agate.
3. The Panel has assessed \$15,900.00 of the forum fees against Respondent Spencer Trask.
4. The Panel has assessed \$15,900.00 of the forum fees against Respondent Segura.

Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant Kaminsky is solely liable for:

<u>Forum Fees</u>	= \$15,900.00
<u>Total Fees</u>	= \$15,900.00
<u>Less Payments</u>	= \$ 1,270.00
Balance Due NASD Dispute Resolution	= \$14,630.00

3. Claimant Agate is solely liable for:

<u>Forum Fees</u>	= \$15,900.00
<u>Total Fees</u>	= \$15,900.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$15,900.00

4. Respondent Spencer Trask is solely liable for:

Member Fees	= \$ 9,200.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	= \$15,900.00
<u>Total Fees</u>	= \$25,700.00
<u>Less payments</u>	= \$ 9,200.00
Balance Due NASD Dispute Resolution	= \$16,500.00

4. Respondent Segura is solely liable for:

Forum Fees	= \$15,900.00
<u>Adjournment Fee</u>	= \$ 600.00
<u>Less Payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$15,300.00


All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Neil J. Carey	-	Public Arbitrator, Presiding Chair
Ira S. Cure, Esq.	-	Public Arbitrator
Harry Aronsohn	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Neil J. Carey
Public Arbitrator, Presiding Chairperson



Signature Date

Ira S. Cure, Esq.
Public Arbitrator

Signature Date

Harry Aronsohn
Non-Public Arbitrator

Signature Date

August 28, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Ira S. Cure, Esq.	-	Public Arbitrator
Harry Aronsohn	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date



Ira S. Cure, Esq.
Public Arbitrator



Signature Date

Harry Aronsohn
Non-Public Arbitrator

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ARBITRATION PANEL

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Harry Aronsohn	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

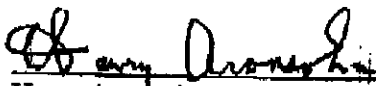
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Neil J. Carey
Public Arbitrator, Presiding Chairperson

Signature Date

Ira S. Cure, Esq.
Public Arbitrator

Signature Date



Harry Aronsohn
Non-Public Arbitrator

8/27/03

Signature Date

August 28, 2003

Date of Service (For NASD Dispute Resolution use only)