

Stipulated Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jeffrey Surovell, (Claimant) vs. U.S. Securities and Futures Corp., George Hopkinson, and Robert Van Batenburg, (Respondents)

Case Number: 01-00941

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Jeffrey Surovell, hereinafter referred to as "Claimant": Jill Gross, Esq., John Jay Legal Services, Inc., White Plains, NY.

Respondent, U.S. Securities and Futures Corp. ("USSFC"): Fred S. Konigsberg, Esq., Law Offices of Fred S. Konigsberg, Irvine, CA.

Respondent, George Hopkinson ("Hopkinson"), appeared *pro se*. Previously represented by: Fred S. Konigsberg, Esq., Law Offices of Fred S. Konigsberg, Irvine, CA.

Respondent, Robert Van Batenburg ("Van Batenburg"): Lisa A. Catalano, Esq., Law Offices of Joel Davidson, Park Ridge, NJ.

CASE INFORMATION

Statement of Claim filed on or about: February 22, 2001.

Claimant signed the Uniform Submission Agreement: January 20, 2001.

Joint Statement of Answer filed by USSFC and Hopkinson on or about: April 27, 2001.

USSFC signed the Uniform Submission Agreement: April 27, 2001.

Hopkinson signed the Uniform Submission Agreement: April 27, 2001.

Statement of Answer and Motion to Dismiss filed by Van Batenburg on or about: May 4, 2001.

Van Batenburg signed the Uniform Submission Agreement: June 4, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: common law fraud; breach of fiduciary duty; failure to supervise; unsuitability; unauthorized trading; and solicitations from a non-registered representative. Claimant's claim involved the stock of CyberGuard Corp. ("CyberGuard").

Unless specifically admitted in their Answer, USSFC and Hopkinson denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim does not state facts sufficient to constitute a viable cause of action upon which relief can be granted against Respondents; Claimant's damages, if any, were caused and/or contributed to by the negligent acts and/or the failure of Claimant to mitigate his losses; Claimant ratified each and every purchase and sale of CyberGuard by affirmation or the failure to object to the transaction after being provided with confirmations and month-end statements; Claimant's claims are barred by the doctrines of waiver, estoppel, and/or ratification; Claimant was fully informed and knew of, or should have known, the risks involved in purchasing shares in CyberGuard; Claimant freely and voluntarily assumed the risks involved by making the investments described in the Statement of Claim; and any loss that Claimant suffered as a result of his investments in CyberGuard was caused solely by market factors and other causes beyond Respondents' control.

Unless specifically admitted in his Answer, Van Batenburg denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim upon which relief may be granted; Claimant, at all relevant times, had full knowledge of all *material facts concerning the accounts with USSFC, including the positions maintained and the transactions made therein*; Claimant authorized and/or ratified all transactions in his accounts with USSFC with full knowledge of all material facts thereto; Claimant's claims are barred by the applicable principles of waiver, ratification, and estoppel; Claimant, with full knowledge of all material facts, waived the alleged claims and injuries set forth in the Statement of Claim and the alleged damages therefrom by failing to take timely and appropriate action prior to incurring such damages; Van Batenburg, in discharging his duties, if any, to Claimant, acted in good faith and exercised that degree of care, diligence, and skill which ordinarily prudent men would exercise in similar circumstances and like positions; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Van Batenburg; Claimant's Statement of Claim is barred, in

whole or in part, by the applicable statute of limitations; Claimant did not reasonably rely to his detriment on any action or inaction of, or legally attributable to, Van Batenburg; the transactions complained of in the Statement of Claim were duly authorized by Claimant who, at all relevant times, was in sole control of the assets in his accounts; Claimant knew and understood the risks associated with the investments made in his accounts, and was willing and able to assume those risks; and Claimant had the opportunity and means to mitigate his damages but failed to do so in an appropriate and responsible manner.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$48,387.23, plus New York statutory interest, and costs.

USSFC and Hopkinson requested that this arbitration proceeding be dismissed.

Van Batenburg requested that:

- a. Claimant's Statement of Claim against Van Batenburg be dismissed in its entirety and that Claimant's demand for damages be denied;
- b. Costs and expenses incurred by Van Batenburg be assessed against Claimant;
- c. The Panel order/recommend that this matter be expunged from Van Batenburg's CRD records; and
- d. The Panel award such other relief as it deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter, Claimant, USSFC, and Van Batenburg agreed to enter into a Stipulated Award which they executed on February 5, 2002, February 6, 2002, and February 12, 2002, respectively. This Stipulated Award is attached hereto, and is being submitted to the Panel for its consideration.

Prior to the hearing in this matter, Claimant dismissed his claims against Respondent Hopkinson, without prejudice.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

Claimant, USSFC, and Van Batenburg entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of said parties for entry of an Award, the written stipulation thereto, the Panel hereby grants the motion and enters this Award granting the following relief:

1. Respondent Van Batenburg is hereby dismissed from this proceeding, with prejudice.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Van Batenburg's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Van Batenburg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other requests for relief are 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	= \$ 175.00
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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 persons at the time of the events giving rise to the dispute. In this matter, U.S. Securities and Futures Corp. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= Waived

Adjournment Fees

Adjournments requested during these proceedings:

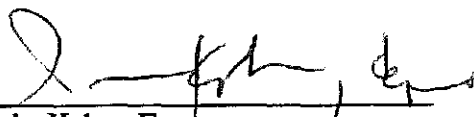
Dec. 18 & 19, 2001, adjournment by Claimant	= WAIVED
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ARBITRATION PANEL

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
James Newton Nash, Esq.	-	Public Arbitrator
William E. Smith	-	Industry 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 which is my award.



Irwin Kahn, Esq.
Public Arbitrator, Presiding Chair

3/5/02

Signature Date

James Newton Nash, Esq.
Public Arbitrator

Signature Date

William E. Smith
Industry Arbitrator

Signature Date

March 19, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

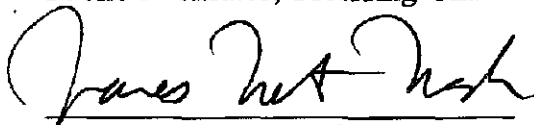
Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
James Newton Nash, Esq.	-	Public Arbitrator
William E. Smith	-	Industry Arbitrator

Concurring Arbitrators' Signatures

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Irwin Kahn, Esq.
Public Arbitrator, Presiding Chair

Signature Date



James Newton Nash, Esq.
Public Arbitrator

Mar. 5, 2002

Signature Date

William E. Smith
Industry Arbitrator

Signature Date

March 19, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
James Newton Nash, Esq.	-	Public Arbitrator
William E. Smith	-	Industry Arbitrator

Concurring Arbitrators' Signatures

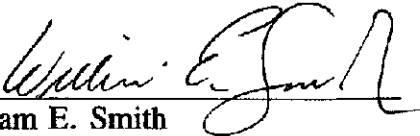
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Irwin Kahn, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James Newton Nash, Esq.
Public Arbitrator

Signature Date


William E. Smith
Industry Arbitrator

3-24-02
Signature Date

March 19, 2002
Date of Service (For NASD office use only)