

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

GKN Securities Corp., (Claimant) vs. Robert Peck, (Respondent)

Case Number: 01-00946

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimant GKN Securities Corp., hereinafter referred to as "Claimant": David Schmidt, Esq., Lubiner & Schmidt, Cranford, NJ. Previously represented by: Michael Colombo, Vice President and Manager, GKN Securities Corp., New York, NY.

Respondent Robert Peck, hereinafter referred to as "Respondent", appeared *pro se*. Previously represented by: M. David Sayid, Esq., Sayid and Associates LLP, New York, NY.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: February 22, 2001.

Statement of Answer filed by Respondent on or about: May 12, 2001.

Respondent signed the Uniform Submission Agreement: June 1, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of Association Agreement and failure to pay amount owed to Claimant for the failure of Respondent's customers to pay for certain transactions.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent violated no written contract, no statute, no law, no rule, and no regulation in connection with the allegations set forth in the Statement of Claim; Claimant assumed the risk of its transactions; Claimant had or should have had full knowledge of all material facts concerning the securities accounts held with the Claimant; the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimant waived any and all claims for relief it may otherwise have had against Respondent; Claimant is estopped from asserting the purported claims set forth in the Statement of Claim; the claims are barred by Claimant's contributory fault, comparative fault, recklessness, and failure to exercise due diligence; Claimant cannot reasonably have relied upon any alleged representations set forth in the Statement of Claim; Claimant has failed to mitigate its damages; Claimant had knowledge of and assumed the risks of each of the transactions on which the Statement of Claim is based; and any and all relief sought by Claimant is barred by the doctrine of unclean hands.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$55,084.20, together with interest, costs, attorneys' fees, and any additional relief that the Panel may deem just and proper.

Respondent requested that the Statement of Claim be denied in its entirety, and that he be awarded costs, fees, expenses, and attorneys' fees in the approximate amount of \$15,000.00, plus such other and further relief as justice and equity require.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Statement of Claim indicates that the entire amount of Claimant's alleged damages resulted from the failure of Respondent's customers to pay for securities. During the hearings in this matter, the Panel allowed Claimant to verbally amend its allegations to state that \$14,500.00 of the alleged damages actually arose from a customer complaint.

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, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$16,051.75 as compensatory damages.
2. 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 = \$1,000.00

**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, GKN Securities Corp. is a party.

Member surcharge = \$1,000.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$1,500.00

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00  
Pre-hearing conference: August 9, 2001 1 session

Two (2) Hearing sessions x \$750.00 = \$1,500.00  
Hearing Dates: December 5, 2001 1 session  
December 6, 2001 1 session

---

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$5,225.00
<u>Less payments</u>	<u>= \$4,850.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

2. Respondent be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00


All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Andrew J. Schoen, Esq. ✓	-	Industry Arbitrator, Presiding Chair
David J. Pine	-	Industry Arbitrator
Randolph Guggenheimer, Jr., Esq.	-	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.

  
\_\_\_\_\_  
Andrew J. Schoen, Esq.  
Industry Arbitrator, Presiding Chair

1/31/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David J. Pine  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Randolph Guggenheimer, Jr., Esq.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

February 5, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

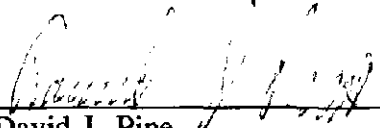
Andrew J. Schoen, Esq.	-	Industry Arbitrator, Presiding Chair
David J. Pine	-	Industry Arbitrator
Randolph Guggenheimer, Jr., Esq.	-	Industry Arbitrator

**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.

\_\_\_\_\_  
Andrew J. Schoen, Esq.  
Industry Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
David J. Pine  
Industry Arbitrator

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Randolph Guggenheimer, Jr., Esq.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

February 5, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Andrew J. Schoen, Esq.	-	Industry Arbitrator, Presiding Chair
David J. Pine	-	Industry Arbitrator
Randolph Guggenheimer, Jr., Esq.	-	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.

---

Andrew J. Schoen, Esq.  
Industry Arbitrator, Presiding Chair

---


Signature Date

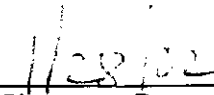
---

David J. Pine  
Industry Arbitrator

---

Signature Date

  
\_\_\_\_\_  
Randolph Guggenheimer, Jr., Esq.  
Industry Arbitrator

  
\_\_\_\_\_  
Signature Date

---

February 5, 2002  
Date of Service (For NASD office use only)