

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gerald E. Danby, (Claimant) v. GKN Securities Corp., Investec Ernst & Co., BNY Clearing Services LLC f/k/a Schroder & Co., Inc., Elliot Kurz, and Matthew Gothers, Fiduciary of Estate of Richard M. Gothers, (Respondents)

Case Number: 01-01967

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimant, Gerald E. Danby, hereinafter referred to as "Claimant": James B. Davis, Esq., Attorney at Law, Newbury, OH.

Respondents, GKN Securities Corp. ("GKN"), Investec Ernst & Company ("Investec"), BNY Clearing Services LLC f/k/a Schroder & Co., Inc. ("BNY"), and Elliot Kurz ("Kurz"), hereinafter collectively referred to as "Respondents": David S. Smith, Esq., Smith Campbell, LLP, New York, NY.

Respondent, Matthew Gothers, Fiduciary of Estate of Richard M. Gothers ("Gothers"): did not enter an appearance in this matter. Previously represented by William M. Sherman, Esq., Sherman & Sanchez, LLC, Stamford, CT.

CASE INFORMATION

Statement of Claim filed on or about: April 18, 2001.

Claimant signed the Uniform Submission Agreement: March 27, 2001.

Joint Statement of Answer filed by Respondents on or about: July 2, 2001.

Motion to Dismiss filed by Respondents BNY and Investec on or about: July 2, 2001.

Respondent GKN did not sign the Uniform Submission Agreement.

Respondent Investec did not sign the Uniform Submission Agreement.

Respondent BNY did not sign the Uniform Submission Agreement.

Respondent Kurz did not sign the Uniform Submission Agreement.

Respondent Gothers did not submit a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized margin trading, failure to supervise, and breach of fiduciary duty. Claimant's claim did not specify the securities involved in this matter.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$200,000.00 plus interest thereon; punitive damages; costs and expenses; and attorneys' fees.

Respondents requested that all claims against them be summarily dismissed and the Panel should issue an award assessing all forum fees, reasonable costs, and attorneys' fees against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated March 27, 2002, Respondent Gothers did not voluntarily submit to the jurisdiction of NASD Dispute Resolution and by the Code of Arbitration Procedure is not required to submit to the jurisdiction in this matter.

On or about August 13, 2002, Respondent Kurz filed for bankruptcy protection under Chapter 7 of the US Bankruptcy Code. Accordingly, all claims against Respondent Kurz were stayed.

Respondents GKN, Investec and BNY did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and having answered the claim appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

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. Respondents GKN and Investec are jointly and severally liable for and shall pay to Claimant the sum of \$20,000.00 as compensatory damages.
2. Any and all relief not specifically addressed herein including punitive damages 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	= \$300.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, GKN Securities Corp., Investec Ernst & Company, and BNY Clearing Services LLC are parties.

<u>GKN Securities Corp.</u>	
Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

<u>Investec Ernst & Company</u>	
Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

<u>BNY Clearing Services LLC</u>	
Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 19-20, 2002, adjournment by Claimant	= \$ 1,125.00
December 9-10, 2002, adjournment by Respondent GKN	= \$ 1,125.00

The Panel has assessed \$562.50 of the postponement fee for the December 9-10, 2002 adjournment against the Claimant.

The Panel has assessed \$562.50 of the postponement fee for the December 9-10, 2002 adjournment jointly and severally against Respondents GKN and Investec.

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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 8, 2001	1 session
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: June 26, 2003	2 sessions
June 27, 2003	2 sessions
Total Forum Fees	= \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents GKN and Investec.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,687.50
Forum Fees	= \$2,812.50
Total Fees	= \$4,800.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$3,375.00

2. Respondent GKN is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Investec is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent BNY is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Respondents GKN and Investec are jointly and severally liable for:

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$2,812.50
Balance Due NASD Dispute Resolution	= \$3,375.00

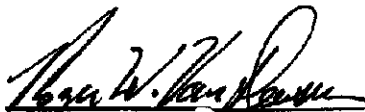
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Roger W. Van Deusen, Esq.	-	Public Arbitrator, Presiding Chair
Thomas J. Radu	-	Public -Public Arbitrator
Joseph Edelstein	-	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.



Roger W. Van Deusen, Esq.
Public Arbitrator, Presiding Chairperson

7-21-03

Signature Date

Thomas J. Radu
Public Arbitrator

Signature Date

Joseph Edelstein
Non-Public Arbitrator

Signature Date

August 1, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

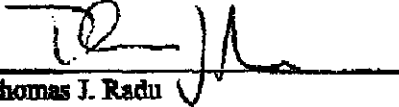
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Joseph Edelstein	-	Non-Public Arbitrator

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Roger W. Van Deusen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Thomas J. Radu
Public Arbitrator

7/28/03

Signature Date

Joseph Edelstein
Non-Public Arbitrator

Signature Date

August 1, 2003

Date of Service (For NASD Dispute Resolution use only)

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Roger W. Van Deusen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas J. Radu
Public Arbitrator

Signature Date



Joseph Edelstein
Non-Public Arbitrator

7/21/03

Signature Date

August 1, 2003
Date of Service (For NASD Dispute Resolution use only)