

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Strathconnen Investments Pty Ltd., Claimant v. Ehrenkrantz King Nussbaum, Inc.,  
Weatherly Securities Corporation, Carl G. Antaki, Thomas Giugliano, and Anthony  
Ottimo, Respondents

Case Number: 03-04525

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant Strathconnen  
Investments Pty, Ltd. ("Strathconnen"):

Edward Gartenberg, Esq.  
Brooks P. Marshall, Esq.  
Thelen Reid & Priest, LLP  
Los Angeles, California

For Respondent  
Ehrenkrantz King Nussbaum, Inc. ("EKN"):

Robert M. Bursky, Esq.  
Law Offices of Robert M. Bursky  
Woodbury, New York

For Respondent  
Carl M. Antaki ("Antaki"):

Michael L. Steindam, Esq.  
Law Office of Michael L. Steindam  
New York, New York

For Respondents Thomas Giugliano  
("Giugliano") and Anthony Ottimo ("Ottimo"):

Michael P. Gilmore, Esq.  
Sims, Moss, Kline & Davis LLP  
Mineola, New York

**CASE INFORMATION**

Initial Statement of Claim filed: June 20, 2003

Amended Statement of Claim filed: December 2, 2004

Claimant's Uniform Submission Agreement signed: June 6, 2003

Statement of Answer to Initial Statement of Claim filed by Respondent Ehrenkrantz King Nussbaum, Inc.: October 9, 2003

Statement of Answer to Initial Statement of Claim filed by Respondent Carl G. Antaki: October 15, 2003

Statement of Answer to Amended Statement of Claim filed by Respondent Ehrenkrantz King Nussbaum, Inc.: December 31, 2004

Joint Statement of Answer to Amended Statement of Claim filed by Respondents Thomas Giugliano and Anthony Ottimo: December 31, 2004

Respondent Ehrenkrantz King Nussbaum, Inc.'s Uniform Submission Agreement signed: October 9, 2003

Respondent Carl G. Antaki's Uniform Submission Agreement signed: October 9, 2003

Respondent Thomas Giugliano's Uniform Submission Agreement signed: December 30, 2004

Respondent Anthony Ottimo's Uniform Submission Agreement signed: December 30, 2004

**CASE SUMMARY**

Claimant's Initial Statement of Claim named EKN, Weatherly Securities Corporation, and Antaki as Respondents and alleged breach of fiduciary duty, unauthorized trading, negligence, and violation of federal and state securities laws. Claimant's allegations involved transactions in I2 Technologies, Cisco Systems, Qlogic.

Claimant's Amended Statement of Claim named Giugliano and Ottimo as additional Respondents, added a new allegation of successor liability, and added new claims for negligent supervision and control person liability.

Respondent EKN denied the allegations of wrongdoing set forth in Claimant's Initial and Amended Statement of Claim.

Respondent Antaki denied the allegations of wrongdoing set forth in Claimant's Initial Statement of Claim.

Respondents Giugliano and Ottimo denied the allegations of wrongdoing set forth in Claimant's Amended Statement of Claim.

### **RELIEF REQUESTED**

Claimant's Initial and Amended Statements of Claim each requested \$124,000.00 in compensatory damages, margin interest and the return of commissions and mark-ups generated by the account during 2001 and 2002, lost opportunity damages according to proof, interest at the statutory rate, unspecified punitive damages, and costs, including attorney's fees.

Respondents EKN, Antaki, Giugliano and Ottimo each requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees. In addition, Respondents Giugliano and Ottimo requested the expungement of all reference to the above captioned arbitration from their registration records maintained by the NASD Central Registration Depository.

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

On May 5, 2003, a trustee was appointed to liquidate Respondent Weatherly Securities Corporation pursuant to the procedures of the Securities Investor Protection Corporation (SIPC). Accordingly, this matter is stayed as to Respondent Weatherly Securities Corporation.

On August 6, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 22, 2003 Respondents EKN and Antaki filed a Motion to Change Venue. Claimant filed an Opposition thereto on January 12, 2004 and Respondents EKN and Antaki each filed a Reply on January 16, 2004. On January 20, 2004 the parties presented their arguments to the Panel during a pre-hearing conference. After due deliberation, the Panel denied EKN and Antaki's Motions to Change Venue.

On November 12, 2004, Claimant filed a Motion to Amend its Statement of Claim. Respondent EKN filed an Opposition thereto on November 22, 2004. On November 23, 2004, the parties presented their arguments to the Panel during a pre-hearing conference. After due deliberation, the Panel granted Claimant's Motion to Amend its Statement of Claim.

On October 24, 2004, Respondent EKN filed a Motion to Dismiss the Statement of Claim or, in the Alternative, to Bifurcate the Arbitration and Stay the Hearing Against EKN Pending the Determination of the Claims Against Respondent Antaki. Claimant filed an Opposition thereto on November 12, 2004 and Respondent EKN filed a Reply on November 16, 2004. On November 23, 2004, the parties presented their arguments to the Panel during a pre-hearing conference. After due deliberation, the Panel denied EKN's Motion to Dismiss without prejudice to EKN to renew the motion at the evidentiary hearing. The Panel denied EKN's Motion to Bifurcate and Stay the Hearing Pending the Determination of Claims against Respondent Antaki.

On February 21, 2006 Respondent Antaki filed a Motion to Dismiss the Statement of Claim. Claimant filed an Opposition thereto on March 2, 2006. On March 21, 2006 the parties presented their arguments to the Panel during a pre-hearing conference. After due deliberation, the Panel denied Respondent the Motion to Dismiss without Prejudice to Antaki to renew the motion at the evidentiary hearing.

On May 30, 2006, Claimant Strathconnen and Respondents EKN, Giugliano, and Ottimo entered into a settlement agreement. On May 31, 2006, during the hearing, Claimant dismissed Respondents EKN, Giugliano, and Ottimo with prejudice.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Carl G. Antaki is liable to and shall pay Claimant the sum of \$20,000.00 in compensatory damages.
- 2) Respondents Ehrenkrantz King Nussbaum, Inc., Thomas Giugliano, and Anthony Ottimo are dismissed with prejudice.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Ehrenkrantz King Nussbaum, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

February 14-17, 2005 adjournment requested by Respondents Giugliano and Ottimo	= \$1,125.00
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April 26-28, 2005 adjournment requested by the Parties	= \$1,125.00
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1. The Panel assessed \$1,125.00 of the adjournment fees jointly and severally to Thomas Giugliano and Anthony Ottimo.
2. The Panel assessed \$562.50 of the adjournment fees to Claimant Strathconnen Investments Pty, Ltd.
3. The Panel assessed \$562.50 of the adjournment fees jointly and severally to Respondents Ehrenkrantz King Nussbaum, Inc., Carl G. Antaki, Thomas Giugliano, and Anthony Ottimo.

#### **Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of April 26-28, 2005 hearings dates: = \$ 300.00

1. The Panel assessed \$150.00 of the three-day cancellation fee to Claimant Strathconnen Investments Pty, Ltd.
2. The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to Respondents Ehrenkrantz King Nussbaum, Inc., Carl G. Antaki, Thomas Giugliano, and Anthony Ottimo.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: December 8, 2004 1 session

Eight (8) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 9,000.00  
Pre-hearing conferences: December 17, 2003 1 session  
January 20, 2004 1 session  
March 22, 2004 1 session  
April 19, 2004 1 session  
November 23, 2004 1 session  
February 1, 2005 1 session  
January 24, 2006 1 session  
March 21, 2006 1 session

Two (2) Hearing sessions @ \$1,125.00/session = \$ 2,250.00  
Hearings: May 31, 2006 2 sessions

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**Total Forum Fees = \$11,700.00**

1. The Panel assessed \$4,950.00 of the forum fees to Claimant Strathconnen Investments Pty, Ltd.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent Carl G. Antaki.
3. The Panel assessed \$1,687.50 of the forum fees to Respondent Ehrenkrantz King Nussbaum, Inc.
4. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents Ehrenkrantz King Nussbaum, Inc. and Carl G. Antaki.

5. The Panel assessed \$2,250.00 of the forum fees jointly and severally to Respondents Ehrenkrantz King Nussbaum, Inc., Carl G. Antaki, Thomas Giugliano, and Anthony Ottimo.
6. NASD Dispute Resolution waived \$1,125.00 of the forum fees.

### Fee Summary

1. Claimant Strathconnen Investments Pty, Ltd. is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 4,950.00
Total Fees	= \$ 5,962.50
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,537.50</b>

2. Respondent Ehrenkrantz King Nussbaum, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 6,887.50
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,687.50</b>

3. Respondent Carl G. Antaki is charged with the following fees and costs:

Forum Fees	= \$ 1,125.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

4. Respondents Thomas Giugliano and Anthony Ottimo are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 1,125.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

5. Respondents Ehrenkrantz King Nussbaum, Inc. and Carl G. Antaki are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>



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6. Respondents Ehrenkrantz King Nussbaum, Inc., Carl G. Antaki, Thomas Giugliano, and Anthony Ottimo are charged jointly and severally with the following fees and costs:


Adjournment Fee	= \$ 562.50
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,962.50
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,962.50</b>

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

**ARBITRATION PANEL**

<b>David J. Berardo, Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Robert L. Schouweiler, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Luther Delano Prater</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
David J. Berardo, Esq.  
Chair, Public Arbitrator

6/2/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert L. Schouweiler, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Luther Delano Prater  
Non-Public Arbitrator

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

6/2/06  
\_\_\_\_\_  
Date of Service


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<b>David J. Berardo, Esq.</b>	•	<b>Public Arbitrator, Presiding Chair</b>
<b>Robert L. Schouweller, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Luther Delano Prater</b>	-	<b>Non-Public Arbitrator</b>

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Chair, Public Arbitrator

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Robert L. Schouweller, Esq.  
Public Arbitrator

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Signature Date

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Luther Delano Prater  
Non-Public Arbitrator

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Signature Date

6/2/06  
Date of Service

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<b>David J. Berardo, Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Robert L. Schouweiler, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Luther Delano Prater</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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David J. Berardo, Esq.  
Chair, Public Arbitrator

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Signature Date

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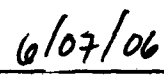
Robert L. Schouweiler, Esq.  
Public Arbitrator

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Signature Date

  
Luther Delano Prater  
Non-Public Arbitrator

  
Signature Date

  
Date of Service