

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

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In the Matter of the Arbitration Between:

John L. Douglas, Claimant v. Firebrand Financial Group, Inc., GKN Securities Corporation,  
BNY Clearing Services LLC also known as Schroder & Co., Inc., Edward B. Martin, Jeffrey A.  
Smith, Marty R. Schaffer and Robert H. Gladstone, Respondents

Case Number: 03-05149

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Members, Non-Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Thomas H. Porter, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents Firebrand Financial Group, Inc.  
GKN Securities Corporation and Robert H. Gladstone:

Meredith R. Cavallaro  
Paduano & Weintraub LLP  
New York, New York

For Respondent BNY Clearing Services LLC:

Jodi E. Lopez, Esq.  
Sidley Austin Brown & Wood  
Los Angeles, California

For Respondent Jeffrey A. Smith:

Jeffrey A. Smith  
Fort Lauderdale, Florida

For Respondent Marty R. Schaffer:

Marty R. Schaffer  
Las Vegas, Nevada

**CASE INFORMATION**

Statement of Claim filed: July 13, 2003

Claimant's Opposition to Respondents' Motion to Dismiss filed: March 30, 2005

Claimant's Uniform Submission Agreement signed: July 8, 2003

Joint Statement of Answer and Motion to Dismiss filed by Respondents Firebrand Financial Group, Inc. ("Firebrand Financial"), GKN Securities Corporation ("GKN") and Robert H. Gladstone: October 29, 2003

Declaration of Robert H. Gladstone in further support of Firebrand Financial, GKN and Robert H. Gladstone's Motion to Dismiss filed: February 22, 2005

Firebrand Financial and GKN's Reply in further support of their Motion to Dismiss filed: April 11, 2005

Answer to Statement of Claim and Motion to Dismiss of Respondent BNY Clearing Services LLC also known as Schroder & Co., Inc. ("BNYCS") filed: October 1, 2003

Reply Brief in further support of Respondent BNYCS's Motion to Dismiss filed: April 11, 2005

Respondent BNYCS's Uniform Submission Agreement signed: September 3, 2003

### CASE SUMMARY

Claimant alleged that Respondents wrongfully put Claimant's account on margin and traded in high-risk securities that were unsuitable for Claimant. Claimant also alleged the following claims with respect to investments in various securities, including but not limited to investments in C-Cube Microsystems, IMP Inc. and Aurora Electronics: 1) Just and Equitable Principles of Trade; 2) Suitability; 3) Omissions and Misrepresentations of Material Fact; 4) Unauthorized Trading; 5) Negligent Supervision and Failure to Supervise; 6) Violation of Corporations Code Sections 25401 and 25504.1; 7) Negligence; 8) Breach of Contract; 9) The Implied Covenant of Good Faith and Fair Dealing; 10) Breach of Fiduciary Duty; and 11) Common Law Fraud.

Respondents Firebrand Financial, GKN and Robert H. Gladstone denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents Firebrand Financial, GKN and Robert H. Gladstone alleged that Claimant's Claim is ineligible for submission to NASD arbitration pursuant to Rule 10304 of the NASD-DR Code of Arbitration Procedure ("the Code") and also alleged that Claimant's Claim is barred by the applicable statute of limitations. Respondents Firebrand Financial, GKN and Robert H. Gladstone also asserted various affirmative defenses.

Respondent BNYCS denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent BNYCS alleged that Claimant's claims are barred by the applicable statute of limitations and are ineligible for arbitration pursuant to Rule 10304 of the Code. Respondent BNYCS also asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$1,000,000.00 or according to proof at hearing, interest, attorney's fees, costs, punitive damages, trebling of the final award, and such further action deemed just and appropriate in this matter.

Respondents Firebrand Financial, GKN and Robert H. Gladstone requested:

1. Dismissal of Claimant's Statement of Claim in its entirety with prejudice;
2. Costs, including attorneys' fees;
3. An order directing that any reference to this matter be deleted and expunged from the records that attend Mr. Gladstone's securities licenses and that the NASD and the Central Registration Depository take all such action to effect such deletion and expungement; and
4. Such other and further relief as the Panel deems just and proper.

Respondent BNYCS requested:

1. Dismissal of Claimant's Statement of Claim in its entirety with prejudice;
2. Costs, including attorney's fees; and
3. Such other and further relief as the Panel deems just and proper.

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

On or about August 12, 2003, the above-referenced matter was stayed with respect to Edward B. Martin because of Mr. Martin's bankruptcy filing.

The Panel noted that service was not effectuated with respect to Respondent Marty R. Schaffer and determined that it did not have jurisdiction over Mr. Schaffer in this matter.

On May 21, 2004, 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.

On October 7, 2004, counsel for Respondents Firebrand Financial, GKN and Robert H. Gladstone 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 or about February 25, 2005, Claimant dismissed Respondent Robert H. Gladstone as a party in this matter.

Respondents Firebrand Financial, GKN and Robert H. Gladstone did not file with NASD-DR properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered Claimant's Claim, are bound by the determination of the Panel on all issues submitted.

Respondent Jeffrey A. Smith did not file with NASD-DR a Statement of Answer or properly executed submission to arbitration. The Panel determined that Respondent Jeffrey A. Smith has been properly served with Claimant's Statement of Claim and further determined that Respondent Jeffrey A. Smith is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Jeffrey A. Smith did not participate during the phone conference held April 21, 2005. Pursuant to Rule 10318 of the Code, the Panel determined that Respondent Jeffrey A. Smith received proper notice of the phone conference and ruled to proceed in Mr. Smith's absence.

The Panel 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, motion papers and the arguments presented by counsel during the phone conference held April 21, 2005, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Motions to Dismiss by Respondents Firebrand Financial, GKN, Robert H. Gladstone and BNYCS are granted. Accordingly, all claims by Claimant, including the claim for punitive damages, against Respondents Firebrand Financial, GKN, Robert H. Gladstone, BNYCS and Jeffrey A. Smith are denied.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Robert H. Gladstone's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Robert H. Gladstone must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$375.00

#### **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, GKN and BNYCS are parties and the following fees are assessed:

##### **GKN**

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$4,000.00
Total Member Fees	= \$7,000.00

##### **BNYCS**

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$4,000.00
Total Member Fees	= \$7,000.00

#### **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/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: February 23, 2005	1 session
April 21, 2005	1 session

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Total Forum Fees	= \$2,400.00
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The Panel assessed \$1,200.00 in forum fees to Claimant.

The Panel assessed \$1,200.00 in forum fees jointly and severally to Respondents, GKN and BNYCS.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less Payments	= \$( 1,575.00)
Balance Due NASD-DR	= \$ 0.00

2. Respondent GKN is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 7,000.00

3. Respondent BNYCS is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less Payments	= \$( 7,000.00)
Balance Due NASD-DR	= \$ 0.00

4. Respondents GKN and BNYCS are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 1,200.00

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

ARBITRATION PANEL

Robert M. Smith, Esq.	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
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Robert M. Smith, Esq.  
Chair, Public Arbitrator

4/23/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Paul F. Faberman  
Public Arbitrator

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

\_\_\_\_\_  
Mary Curran, Esq.  
Non-Public Arbitrator

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


4/25/05  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Robert M. Smith, Esq.	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

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Robert M. Smith, Esq.  
Chair, Public Arbitrator

  
Paul F. Faberman  
Public Arbitrator

Signature Date

  
Signature Date

Mary Curran, Esq.  
Non-Public Arbitrator

Signature Date

4/25/05  
Date of Service



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Mary Curran, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Robert M. Smith, Esq.  
Chair, Public Arbitrator

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Signature Date

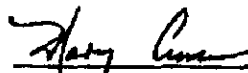
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Paul F. Faberman  
Public Arbitrator

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Signature Date

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Mary Curran, Esq.  
Non-Public Arbitrator

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Signature Date

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4/25/05  
Date of Service