

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Cindi Ettinger

Case Number: 03-05552

Names of the Respondents  
GKN Securites Corp.  
Robert J. Nosel  
Philip A. Gibson  
Shochet Securities, Inc.  
Bluestone Capital Corp.  
Sands Brothers & Co., Ltd.

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Cindi Ettinger, hereinafter referred to as "Claimant", was represented by Sam I. Schwartz, Esq., Eiseman Levine Lehrhaupt & Kakoyiannis, New York, New York.

Respondent GKN Securities Corp. did not appear at the hearings on the merits.

Respondents, Robert J. Nosel ("Nosel") and Philip A. Gibson ("Gibson"), were represented by Delmer C. Gowing, III, Esq., Delmer C. Gowing, P.A., Delray Beach, Florida.

Repondents Shochet Securities, Inc. ("Shochet Securities") and Bluestone Capital Corp. ("Bluestone Capital") did not appear at the hearings on the merits.

Respondent Sands Brothers & Co., Ltd. ("Sands Brothers") did not appear at the hearing on the merits.

**CASE INFORMATION**

Statement of Claim filed on July 29, 2003.

Claimant signed the Uniform Submission Agreement on July 24, 2003.

Respondent GKN did not file a Statement of Answer or Uniform Submission Agreement with NASD Dispute Resolution.

Statement of Answer and Motion to Dismiss filed by Respondents Nosel and Gibson on November 13, 2003.

Respondent Nosel signed the Uniform Submission Agreement on December 17, 2003.

Respondent Gibson executed an undated Uniform Submission Agreement.

Respondent Shochet Securities did not file a Statement of Answer or Uniform Submission Agreement with NASD Dispute Resolution.

Respondent Bluestone Capital did not file a Statement of Answer or Uniform Submission Agreement with NASD Dispute Resolution.

Respondent Sands Brothers filed a Statement of Answer on October 15, 2003.  
Respondent Sands Brothers did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Motion to Dismiss filed by Respondent Sands Brothers on March 19, 2004.  
Claimant filed Responses to Respondent Sands Brothers' Motions to Dismiss on April 20, 2004 and May 17, 2004.

Motion to Dismiss filed by Respondent Sands Brothers on December 23, 2004.  
Claimant filed a Response to Respondent Sands Brothers December 23, 2004 Motion to Dismiss on February 2, 2005.

Claimant filed a Response to Respondents Nosel's and Gibson's Motion to Dismiss on March 22, 2004.

#### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: failure to supervise, breach of contract, breach of fiduciary duties, suitability, violations of the rules and regulations of NASD, and misrepresentation. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents Nosel and Gibson denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimant's claims are barred by the doctrines of ratification, estoppel, unclean hands and laches; Claimant's claims are barred by the statute of limitations; assumption of the risk; failure to exercise due diligence; and contributory/comparative negligence.

Unless specifically admitted in its Statement of Answer, Respondent Sands Brothers denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a cognizable claim, authorization, ratification, and failure to mitigate damage.

#### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 197,089.00
Punitive Damages	\$ 591,267.00
Attorneys' Fees	amount unspecified

Other Costs

amount unspecified

Respondents Nosel and Gibson in their Statement of Answer requested that all claims against Respondents be dismissed with prejudice, that the Arbitration Panel (the "Panel") assess all costs, fees and attorneys' fees against Claimant.

Respondent Sands Brothers in its Statement of Answer requested that the Statement of Claim be dismissed with prejudice, and that it be awarded its costs for the defense of this arbitration.

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

Respondent Sands Brothers did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On April 2, 2004, the Panel denied Respondents Nosel and Gibson's Motion to Dismiss.

On May 21, 2004, the Panel denied Respondent Sands Brothers' March 19, 2004 Motion to Dismiss.

On June 30, 2005, the Panel denied Respondent Sands Brothers' December 23, 2004 Motion to Dismiss.

On January 14, 2005, Claimant notified NASD Dispute Resolution that Claimant had settled all matters relating to this arbitration with Respondent GKN and thus dismissed Respondent GKN from this case with prejudice.

At the hearings on the merits, Claimant informed the Panel that Claimant had recently settled all matters relating to this arbitration with Respondent Sands Brothers. As Respondent Shochet was a subsidiary of Respondent Bluestone and Respondent Sands Brothers had acquired all the assets of Respondent Bluestone, the Panel determined that all matters and claims relating to Respondents Shochet and Bluestone were also fully and finally resolved.

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, 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 Nosel and Gibson are jointly and severally liable to and shall pay to Claimant the sum of \$10,000.00 in compensatory damages. No interest is awarded on this amount;

2. The parties shall bear their respective costs, except as Fees are specifically addressed below;  
and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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 = \$ 375.00

#### **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. Accordingly, Respondents GKN and Sands Brothers are parties.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 28-31, 2005, adjournment requested by Claimant = \$ 1,200.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: December 9, 2004 1 session

Three (3) Pre-hearing sessions with the Panel @ \$ 1,200.00 = \$ 3,600.00  
Pre-hearing conferences: May 27, 2004 1 session  
February 14, 2005 1 session  
June 23, 2005 1 session

Three (3) Hearing sessions @ \$ 1200.00 = \$ 3,600.00  
Hearing Dates: January 30, 2006 2 sessions  
January 31, 2006 1 sessions

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Total Forum Fees = \$ 7,650.00

1. The Panel has assessed \$ 3,825.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 3,825.00 of the forum fees jointly and severally to Respondents Nosel and Gibson.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Adjournment Fees	= \$ 1,200.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 5,400.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

2. Respondent GKN is assessed and shall pay:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,000.00

3. Respondent Sands Brothers is assessed and shall pay:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Nosel and Gibson are jointly and severally assessed and shall pay:

Forum Fees	= \$ 3,825.00
Total Fees	= \$ 3,825.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

**ARBITRATION PANEL**

Zarin P. Bengali, Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Geiger	-	Public Arbitrator, Panelist
Gordon E. Wright	-	Non-Public Arbitrator, Panelist

Concurring Arbitrator's Signature

Bengali

Zarin P. Bengali, Esq.  
Public Arbitrator, Presiding Chairperson

2-1-06

Signature Date

James W. Geiger  
Public Arbitrator, Panelist

Signature Date

Gordon E. Wright  
Non-Public Arbitrator, Panelist

Signature Date

February 3, 2006

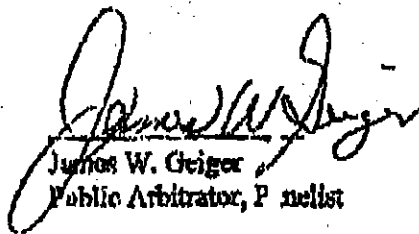
Date of Service (For NASD Dispute Resolution office use only)

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**Concurring Arbitrators' Signatures**

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Zaria P. Bengali, Esq.  
Public Arbitrator, Presiding Chairperson

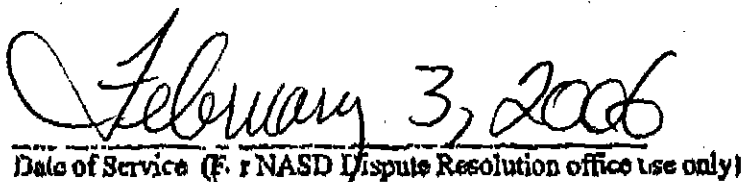
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Signature Date

  
James W. Geiger  
Public Arbitrator, Panelist

  
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Gordon E. Wright  
Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

Zarin P. Bengali, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

James W. Geiger  
Public Arbitrator, Panelist

Signature Date

Gordon E. Wright  
Gordon E. Wright  
Non-Public Arbitrator, Panelist

02/02/06  
Signature Date

February 3, 2006  
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