

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant / Counter Respondent

Daniel G. Kahn

and

Case Number: 04-06696  
Hearing Site: Houston, Texas

Names of Respondents / Counter Claimants

First Southwest Company,  
Fixed Income Securities, LLP,  
Joe Robert Cotton, and  
Patricia Gail Bratton

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**NATURE OF DISPUTE**

Customer v. Member Firms and Associated Persons

**REPRESENTATION OF PARTIES**

Daniel G. Kahn ("**Claimant**") was represented by Joel H. Pullen, Esq., Pulman, Bresnahan & Pullen, LLP, San Antonio, Texas.

Fixed Income Securities, LLP ("**Fixed Income**"), Joe Robert Cotton ("**Cotton**"), and Patricia Gail Bratton ("**Bratton**") were represented by David A. Jones, Esq., Akin, Gump, Strauss, Hauer & Feld, LLP, San Antonio, Texas.

First Southwest Company ("**First Southwest**") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 22, 2004. The Submission Agreement of Claimant, Daniel G. Kahn, was signed on or about September 3, 2004.

The Statement of Answer and Counterclaim was filed jointly by Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, on or about November 10, 2004. The Submission Agreement of Respondent, Fixed Income Securities, LLP, was signed on or about November 24, 2004. The Submission Agreement of Respondent, Joe Robert Cotton, was signed on or about November 24, 2004. The

Submission Agreement of Respondent, Patricia Gail Bratton, was signed on or about November 19, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, failure to supervise, misrepresentations and omission of facts. The causes of action related to the recommendation and purchase of Greenpoint Manufacturing Housing Series 1999-5 Class B bonds (the "Greenpoint Bonds"). Claimant alleged that Respondents induced him to purchase the Greenpoint Bonds and misrepresented their rating on the bonds as BBB+ as opposed to the CCC status, as they were "junk bonds." Claimant also alleged that Respondents violated the Texas Deceptive Trade Practices - Consumer Protection Act by engaging in false, misleading and deceptive practices.

Unless specifically admitted in their Answer, Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the doctrines of waiver, estoppel, ratification and the statute of limitations; Claimant's claims are barred by the election of remedies doctrine; Claimant failed to state a claim upon which relief can be granted; Claimant failed to mitigate his damages; and Claimant's claims are barred by the doctrine of unclean hands.

Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, asserted causes of action in their Counter claim under the Deceptive Trade Practices Act alleging that this claim was filed in bad faith and/or brought for the purpose of harassment. In addition, Respondents requested that Panel issue a declaratory judgment.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$200,000.00
Punitive/Exemplary Damages	\$250,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file, the undersigned arbitrators have determined that Respondent, First Southwest Company, had not been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent, First Southwest Company, had not received due notice of the hearing as required under Rule 10315 of the Code.

At the final hearing, Respondents' counsel made an oral motion to Dismiss Respondent, Patricia Gail Bratton, and expunge these claims from her CRD record. The Panel granted this Motion.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

"The claim, allegation, or information is factually impossible or clearly erroneous."

Unless NASD specifically waives this requirement in writing, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims against Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, are denied and dismissed with prejudice;
- 2.) Claimant's claims against Respondent, First Southwest Company, are dismissed without prejudice;
- 3.) The Counter claim of Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, is denied and dismissed with prejudice;

- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Patricia Gail Bratton's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Patricia Gail Bratton, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 6.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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
Counter claim filing fee	= \$ 500.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Fixed Income Securities, LLP.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

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

The Arbitration 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 \$1,125.00	= \$ 1,125.00
Pre-hearing conference: January 10, 2005	1 session

Two (2) Hearing sessions x \$1,125.00	= \$ 2,250.00
Hearing Date: September 6, 2005      2 sessions	
Total Forum Fees	= \$ 3,375.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Fixed Income Securities, LLP.

**Fee Summary**

Claimant, Daniel G. Kahn, is liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due to Claimant	= \$ 1,125.00

Respondent, Fixed Income Securities, LLP, is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 8,575.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

Respondents, Fixed Income Securities, LLP, Joe Robert Cotton, and Patricia Gail Bratton, are jointly and severally liable for:

Counter claim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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

**ARBITRATION PANEL**

Frank M. Romano - Public Arbitrator, Presiding Chair  
Irwin S. Sugerman - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frank M. Romano  
Frank M. Romano  
Public Arbitrator, Presiding Chair

September 8, 2005  
Signature Date

/s/ Irwin S. Sugerman  
Irwin S. Sugerman  
Public Arbitrator

September 8, 2005  
Signature Date

/s/ James M. Alexander  
James M. Alexander  
Non-Public Arbitrator

September 8, 2005  
Signature Date

September 8, 2005  
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

9/8/05  
Signature Date

Irwin S. Sugerman  
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Signature Date

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Non-Public Arbitrator

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