

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Zouheir Beidoun

92-02743

Name of Respondents

GKN Securities Corporation  
Carl Wiseman  
Bear Stearns Securities Corporation

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**REPRESENTATION**

For Claimant, Zouheir Bedouin ("Claimant"), Christopher Lovell, Esq. located in New York, New York.

For Respondents, GKN Securities Corp., ("GKN"), Carl Wiseman ("Wiseman") and Bear Stearns Securities Corporation ("Bear Stearns"), David Smith, Esq. of Smith Campbell & Paduano, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: August 11, 1992.

Claimant's Submission Agreement signed on: August 10, 1992.

Statement of Answer and Counterclaim filed by Respondents on: November 13, 1992.

Respondents' Submission Agreements signed on: November 12, 1992.

Claimant's Additional and Supplemental Claim against Respondent Bear Stearns filed on: November 12, 1992.

Claimant's Additional Amended Supplemental Claim filed on: December 16, 1993.

Respondent Bear Stearns' Answer to Additional Claim filed on: December 30, 1992.

Claimant's Reply to Counterclaim filed on: January 29, 1993.

Claimant's Post Hearing Brief filed on: December 6, 1994.

Respondents' Post Hearing Memorandum filed on: December 6, 1994.

Respondents' Post Hearing Reply Memorandum filed on: January 6, 1995.

Claimant's Post Hearing Reply Brief filed on: January 9, 1995.

### HEARING INFORMATION

Hearing Dates/Sessions:	October 31, 1994	--	2 Sessions
	July 25, 1994	--	2 Sessions
	July 15, 1994	--	2 Sessions
	July 14, 1994	--	2 Sessions
	March 8, 1994	--	2 Sessions
	March 7, 1994	--	2 Sessions
	January 14, 1994	--	2 Sessions
	December 15, 1993	--	2 Sessions
	December 14, 1993	--	2 Sessions
	June 29, 1993	--	1 Session
	June 17, 1993	--	2 Sessions

Hearing Locations: NASD Offices, 33 Whitehall Street, New York, New York.

### CASE SUMMARY

Claimant, in his Statement of Claim, alleged that his purchase of 30,000 shares of Value Merchants Inc. ("VMI") common stock, made on or about May 14, 1992 for \$511,382.50, was induced by the fraudulent representations, material omissions and deceit of Respondents GKN and Wiseman. Claimant alleged that Respondents failed to disclose material facts (i.e. that Claimant could not trust Respondents with his properties, funds and securities, that GKN was not set up to operate in a trustworthy manner to handle Claimant's properties, funds and securities in accordance with the standards and customs in the industry and applicable laws and regulations, and that Respondents intended to and stood did make large transactions in Parlux common stock and in other securities in almost all of which GKN was a market maker, without first contacting Claimant or otherwise obtaining an order or his approval or authority). Claimant alleged that during certain solicitations, Claimant informed Respondents that he was a member of the Board of Directors of Parlux, that he did not wish to give power of attorney to Respondents and did not give powers of attorney over his other accounts, and that he did not invest on margin at other brokerage firms, invested in securities only to the extent that he could pay in full in cash for them, and did not understand how margin loans worked and did not want to invest on margin with Respondents.

Claimant further alleged that after the investment in 30,000 shares of VMI was fully paid for by Claimant, Respondents proceeded to use such collateral for margin loans and made over 120 unauthorized transactions in securities in less than two months without any order, approval or authority from Claimant. This, Claimant alleged, generated in excess of \$103,000 in commissions and revenues for Respondents, and converted Claimant's capital and buying power into an outlet for Respondents' market-making activities.

Additionally, Claimant alleged that on or about June 4, 1992, when he met with Respondents, they did not mention the material facts pertaining to the numerous transactions and the existence of margin loans in Claimant's account. Claimant alleged that during this meeting he agreed to transfer the securities from his inactive account with Dean Witter to his GKN account. Claimant alleged that on the following day, Respondents presented to Claimant blank forms which claimant signed based upon Respondents' representation that such forms were appropriate to accomplish the transfer. Claimant alleged that he did not realize that these forms might authorize margin.

Furthermore, Claimant alleged that during a subsequent telephone conversation, Respondents solicited Claimant to invest in 10,000 additional shares of VMI, claiming they had already placed the order. Claimant alleged that due to lack of funds, he instructed Respondents to transfer 20,000 shares of Parfumania from Claimant's account with another broker dealer to his account with Respondents to pay for the investment in 10,000 more shares of VMI. Claimant alleged that Respondents convinced him to keep the additional 10,000 shares of VMI "on margin" in his account with Respondents until the proceeds were actually received from the sale of VMI. Claimant alleged that this was left to Respondents and there was not authority given in this or any other communication by Claimant for any other purchases or sales to be made on margin by Respondents.

Claimant also alleged that during a later telephone conversation, Respondents told him that he was to send \$400,000 to them to pay for numerous securities investments in his account. Claimant stated he refused.

Respondents replied that Beidoun complained about fraudulent trading after the stock prices of his investments plummeted. GKN stated that Beidoun filed his complaint in an effort to avoid having to pay for his own bad investments. GKN points to the fact that Beidoun was in a position to know in advance that Parlux would be announcing a 92% increase in earnings and that his purchases were all dated before the announcement proving that he was betting on the stock to rise. When the stock went the opposite way, stated Respondents, Beidoun found himself in a position where he was unable to cover the original purchases. Beidoun's reaction was to complain to the broker that the original purchases were in fact unauthorized.

Respondents further contended that Beidoun's investing history suggests that it was not out of character to execute trades such as those that are allegedly unauthorized in the case at hand. Beidoun was connected with Parlux through a close associate and with Parfumania through his membership on the Board of Directors. Moreover, GKN asserted that the proper confirmations had been sent to Beidoun and that at the time of receipt he had made no complaint about the trades. These confirmations have been produced by Beidoun and show that he knew of the purchases months before he actually complained. Wiseman contended that during the May 20 telephone conversation where Beidoun claims he only authorized the purchase of VMI shares, he also instructed Wiseman to purchase shares of Parlux and Parfumania on margin. As these stocks collapsed, alleged Respondents, Beidoun was called on to cover the purchases that he had made on margin.

Respondents' defense alleges that the Customer Agreement signed by Beidoun clearly indicates that complaint must be made within five days after the confirmation was sent and within ten days after the monthly statement was sent. Beidoun did not register his complaint until well after these mailings were sent to him. Further, GKN alleges that as a matter of law, punitive damages can not be awarded in arbitration. Finally, GKN alleges that under the customer agreement Bear Stearns is not liable for any acts purportedly perpetrated by the introducing broker.

Respondents counterclaims that Beidoun's account now consists of a debit balance of \$161,000.

Claimant responded to GKN's counterclaim saying that in fact Bear Stearns holds \$210,000 in his account with another broker dealer and that therefore Bear Stearns has no reason to ask for an additional \$161,000. Beidoun claims that Bear Stearns owed him a fiduciary duty to safeguard against the fraud perpetrated by GKN. The aforementioned money was in an account with Josephthal, Lyon and Ross, Inc. who had a clearing agreement with Bear Stearns, therefore Bear Stearns had and continue to have access to that money.

In his supplemental claim, Claimant alleged that Respondents had been sending the appropriate mailings to the wrong address. Beidoun claims that it was part of Bear Stearns fiduciary duty to insure that such mailings were sent to the appropriate address.

Claimant further alleges that he had made GKN aware, by mail from his office in Kuwait, that he had not authorized the excessive trading in his account, and that securities that had been transferred to the account from his account with Dean Witter be transferred to an account with American Bond Trading. In effect this would close out Claimant's account with GKN.

**RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$1,200,00.00 and punitive damages in excess of \$3,000,000.00, as well as costs and attorney fees.

Respondents requested all claims against them be dismissed in their entirety and counterclaimed for approximately \$161,000.00 (an alleged debit balance in a GKN margin account) plus interest.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies the parties have agreed to receive conformed copies of the Award while the originals remain on file with the 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. All claims of Claimant Beidoun against all Respondents are denied.
2. Claimant Beidoun is liable to Respondent GKN in the amount of **ONE HUNDRED SIXTY SEVEN THOUSAND SIX HUNDRED EIGHTY SIX DOLLARS and FORTY FIVE CENTS (\$167,686.45).**

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Nonrefundable filing fees:	\$ 1,000.00
Hearing Session Deposit (\$1,000 x 21 sessions)	\$21,000.00
Total Fees:	\$22,000.00

Claimant Beidoun is liable for one-third of the forum fees.

Respondent GKN is liable for one-third of the forum fees.

Respondent Carl Wiseman is liable for one-third of the forum fees.

1. Claimant paid \$1,816.000 and owes \$5,517.33.
2. Respondent GKN paid \$2,250.00 and owes \$5,083.33.
3. Respondent Carl Wiseman owes \$7,333.33.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures  
Name

Mark D. Shefts  
Mark D. Shefts

Public/Industry

Industry

Date of Decision: 3/20/95

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 13<sup>th</sup> day of March, 1995, before me personally appeared Mark D. Shefts known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Christina Ciulla

CHRISTINA CIULLA  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 20, 1999



Concurring Arbitrators' Signatures  
Name

Marilyn J. Salzman  
Marilyn J. Salzman, Esq.

Public/Industry

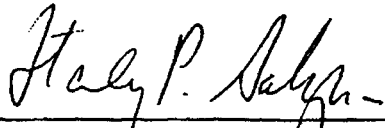
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Date of Decision: 3/20/95

STATE OF: New York  
COUNTY OF: ~~New York~~ Nassau

S.S.:

On this 9<sup>th</sup> day of March, 1995, before me personally appeared Marilyn J. Salzman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



STANLEY P. SALZMAN  
NOTARY PUBLIC, State of New York  
No. 8746425  
Qualified in Nassau County  
Commission Expires August 31, 1996

Concurring Arbitrators' Signatures  
Name



Robert Pincus, Esq.

Public/Industry

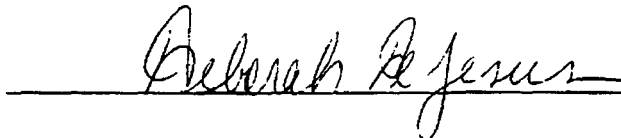
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Date of Decision: 3/20/95

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 20 day of March, 1995, before me personally appeared Robert Pincus, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Deborah A. DeJesus", is written over a horizontal line.

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996