

## AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Robert W. Smith

v.

Arbitration No.  
96-04915

Name of Respondent(s)

Landmark International Equities  
Brett Fahlikman  
Howard Berger  
Yuri Aulov

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## REPRESENTATION

Claimant represented himself in this matter.

For Landmark International Equities: No appearance.

For Brett Fahlikman:

Robert Bertsch, Esq.  
Port Washington, New York

For Yuri Aulov:

Edward Toscano, Esq.  
Huntington Station, New York

For Howard Berger:

Scott M. Zucker, Esq.  
Great Neck, New York

### CASE INFORMATION

Statement of Claim filed: October 29, 1996

Claimant's Submission Agreement signed: October 29, 1996 and December 19, 1996.

Statement of Answer filed by Respondents:

Landmark International Equities: None filed  
Brett Fahlikman: January 28, 1997  
Yuri Aulov: February 28, 1997  
Howard Berger: February 26, 1997

Respondents' Submission Agreements signed:

Landmark International Equities: None submitted  
Brett Fahlikman: January 28, 1997  
Yuri Aulov: February 24, 1997  
Howard Berger: February 24, 1997

### HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

July 17, 1997	-	1 session (3 panelists)
December 22, 1997	-	1 session (1 panelist)

The evidentiary hearing was held in San Francisco, California, as follows:

March 18, 1998	-	1 session
March 20, 1998	-	2 sessions

### CASE SUMMARY

Claimant alleged lack of suitability and misrepresentation with respect to his investments in warrants, common stock and units consisting of both warrants and common stock of Guardian Technology, Greenman Technology and RF Management.

Respondent Fahlikman denied all allegations of wrongdoing, and stated that he inherited the account when Respondent Aulov left the employ of Landmark International, and that he made no purchase recommendations for this account, and that he made no commissions from this account.

Mr. Fahlikman further contested the standing of Claimant to bring any claims concerning the purchase of units of Guardian Technology, as the units were not purchased in Claimant's account.

Respondent Berger stated that he had no relationship with Claimant, did not transact business with Claimant, and received no commissions from Claimant's transactions. Furthermore, Mr. Berger stated that Claimant stated no allegations against him, but merely put his name in the caption of the case.

Respondent Aulov denied the allegations of the claim, and stated that at the time the account was opened, Claimant established that he was an experienced, sophisticated investor with sufficient income and net worth to engage in a speculative investment strategy. Mr. Aulov also stated that Claimant approved all transactions with full knowledge of the speculative nature of his investments.

### **RELIEF REQUESTED**

Claimant requested damages of approximately \$48,846.00.

The answering Respondents each requested dismissal of all claims.

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

Prior to the evidentiary hearing, the panel considered the answering Respondents' motions to dismiss. Respondent Berger's motion to dismiss was granted. The motions of Mr. Aulov and Mr. Fahlikman were denied.

Respondent Landmark made no appearance at the hearing.

Respondent Fahlikman appeared at hearing via telephone.

Respondent Aulov did not appear at the hearing.

The attending parties agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **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 asserted by Claimant are denied and dismissed in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimant's \$120.00 non-refundable filing fee. Claimant is assessed all forum fees, as follows:

2 pre-hearing conferences @ \$300/session	\$ 600.00
3 hearing sessions @ \$400/session	<u>\$1,200.00</u>
	\$1,800.00
Credit for deposit	<u>(\$ 400.00)</u>
Balance due:	<u>\$1,400.00</u>

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

Concurring Arbitrators Signatures:

Date signed:

\_\_\_\_\_  
Helen B. Culiner  
Presiding Chairperson  
Public Arbitrator

\_\_\_\_\_  
Martin J. Haley  
Public Arbitrator

\_\_\_\_\_  
James D. Murray  
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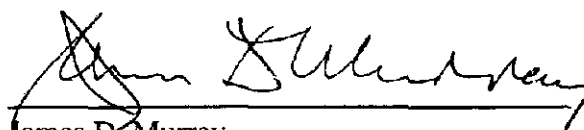
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4/7/98

Date served: 4/9/1998

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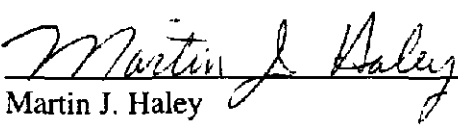
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