

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

First Montauk Securities Corp.

Case No. 99-04000

Hearing Site: Boca Raton, Florida

Names of Respondents

Neil Paul  
Constantine Carusos

Names of Third Party Respondents

Gregory Neal Long  
David Myron McCoy

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**REPRESENTATION OF PARTIES**

For First Montauk Securities Corp. ("Montauk") hereinafter referred to as "Claimant": Jon A. Jacobson, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

For Respondent Neil Paul ("Paul"): Eugene Michael Kennedy, Esq. of Fort Lauderdale, Florida until his withdrawal as counsel on December 17, 1999. Thereafter, Respondent Paul appeared pro se until September 21, 2000, at which time attorney Michael Jude Jannuzzi undertook representation on his behalf.

For Respondent Constantine Carusos ("Carusos"): Eugene Michael Kennedy, Esq. of Fort Lauderdale, Florida until his withdrawal as counsel on December 17, 1999. Thereafter, Respondent Paul appeared pro se until August 18, 2000, at which time attorney Bruce A. Barket undertook representation on his behalf.

For Gregory Neal Long ("Long") and David Myron McCoy ("McCoy") hereinafter collectively referred to as "Third Party Respondents": Jon A. Jacobson, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 31, 1999.

Claimant signed the Uniform Submission Agreement: September 16, 1999.

Statement of Answer, Counterclaim and Third Party Claim filed by Respondents Paul and Carusos on or about: January 28, 2000.

Respondent Paul signed the Uniform Submission Agreement: December 21, 1999.

Respondent Carusos signed the Uniform Submission Agreement: December 21, 1999.  
Statement of Answer to Counterclaim and Third Party Claim filed by Claimant and Third Party Respondents on or about: February 8, 2000.  
Third Party Respondents Long and McCoy did not file executed Uniform Submission Agreements.

### CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) open account; 3) and account stated. The causes of action relate to Respondents' failure to satisfy their obligations pursuant to the margin agreement they maintained with Claimant Montauk.

Unless specifically admitted in their Answer Respondents Paul and Carusos denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Respondents justifiably relied on Claimant and Third Party Respondents as experts in the securities brokerage business; 2) Respondents were without material knowledge of the extraordinary risks presented to them by the exercise of defacto control of Respondents' account, and the extremely risky strategy implemented by Claimant and Third Party Respondents in handling Respondents' account; 3) any consents by Respondents are ineffective and invalid as they were not informed consents; and 4) Claimant and Third Party Respondents failed to disclose the risks of option trading to Respondents.

Respondents Paul and Carusos asserted the following in their Counterclaim/Third Party Claim: 1) Claimant and Third Party Respondents failed to disclose the risks of option trading to Respondents; 2) Claimant and Third Party Respondents breached their duty to Respondents; 3) Claimant and Third Party Respondents acted in a manner to generate commissions for themselves; 4) Claimant and Third Party Respondents recommended unsuitable transactions and a reckless investment strategy; 5) Claimant and Third Party Respondents made false statements to Respondents; 6) Claimant and Third Party Respondents failed to disclose extraordinary risks to Respondents; 7) Claimant, through Third Party Respondents, recklessly disregarded Respondents' interests and welfare and employed artifices, schemes and devices to manage and control Respondents' account; and 8) Claimant and Third Party Respondents violated the Rules of Fair Practice of the NASD.

Unless specifically admitted in their Answer, Claimant and Third Party Respondents Long and McCoy denied the allegations made in the Counterclaim/Third Party Claim and asserted the following defenses: 1) Respondents were fully advised of and understood the nature of the investments purchased in their account; 2) Respondents had full, complete, accurate and contemporaneous knowledge of the transactions in their account; 3) any diminution in the value of Respondents' account was caused in whole or in part by events outside the control of Claimant; 4) Respondents expressly ordered, approved, participated in and ratified the acts and transactions in their account; 5) Respondents are barred by the doctrines of waiver, estoppel and ratification; 6) any losses incurred by Respondents were incurred due to their own decisions, conduct and/or negligence; 7) Respondents failed to exercise due diligence and to timely disaffirm the transactions and acts about which they complain; 8) Respondents

failed to mitigate their damages; 9) Respondents' relationship with Claimant is contractual in nature, therefore, any tort claims for economic losses are barred as a matter of law; 10) at all times, Claimant acted in good faith and exercised reasonable diligence; and 11) Respondents' claims are time-barred under the applicable statutes of limitation and/or repose.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$534,717.24, plus interest, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper. In addition, Claimant requested that all claims asserted against it in the Counterclaim be dismissed.

Respondents Paul and Carusos requested that all claims against them be dismissed and such other and further relief as is deemed just and proper.

In their Counterclaim/Third Party Claim, Respondents Paul and Carusos requested unspecified compensatory damages, plus interest, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Third Party Respondents requested that all claims against them be dismissed and that they be granted their attorney's fees.

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

Third Party Respondents Long and McCoy did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

On September 14, 2000, a telephonic pre-hearing conference was held between the parties and the chairperson to consider Claimant's Motion to Compel. On or about September 14, 2000, the chairperson issued an order which directed that in the event Respondents failed to comply with the terms set forth therein with respect to discovery that Claimant shall file a motion for summary judgment directing the panel to enter a damage award in favor of Claimant. Respondents failed to comply with the directions set forth therein with respect to discovery.

On or about November 16, 2000, Claimant submitted a Motion for Summary Judgment to NASD Dispute Resolution, Inc. Claimant amended its Motion for Summary Judgment on November 17, 2000 to include a request for dismissal of Respondents' counterclaim and third party claim. Respondents did not submit a response to the Motion for Summary Judgment. On February 8, 2001, the Panel issued an Order which granted the Motion for Summary Judgment on behalf of Claimants and Third Party Respondents, the dismissal of the Respondents' Counterclaim and Third party claim.

### **AWARD**

After considering the pleadings, the Motion to Compel Discovery, the Motion for Summary Judgment and the Amended Motion for Summary Judgment, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Motion for Summary Judgment is granted in favor of Claimant.

Respondents' counterclaim and third party claim are dismissed.

Respondents Paul and Carusos are liable, jointly and severally, and shall pay to Claimant the sum of \$534,717.24 as compensatory damages, plus interest at the rate of 10% per annum from July 30, 1999 until the date of payment of the Award. The Award is based on Claimant's claims for breach of contract, open account, and account stated.

Respondents Paul and Carusos are liable, jointly and severally, and shall pay to Claimant the sum of \$1,250.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

Any and all other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,250.00
Counterclaim/Third party claim filing fee	= \$ 250.00

#### **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 a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

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

The panel has the authority to assess 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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: September 14, 2000	1 session
Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences: April 26, 2000	1 session
May 12, 2000	1 session
Total Forum Fees	= \$2,850.00

The panel has assessed the total forum fees of \$2,850.00 to Claimant.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

#### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 6,100.00
Forum Fees	= \$ 2,850.00

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Total Fees	= \$10,200.00
Less payments	= \$8,550.00

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Balance Due NASD Dispute Resolution, Inc.	= \$1,650.00
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Respondents Paul and Carusos be and hereby are jointly and severally liable for:

Filing Fee	= \$250.00
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Total Fees	= \$250.00
Less payments	= \$250.00

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Balance Due NASD Dispute Resolution, Inc.	= \$0.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>Robert M. Rosenthal, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Charles Hoffman, Esq.</i>	-	<i>Public Arbitrator</i>
<i>P. David Isenberg</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Robert M. Rosenthal, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
/s/  
Charles Hoffman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
/s/  
P. David Isenberg  
Non-Public Arbitrator

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

October 23, 2001

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

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<i>P. David Isenberg</i>	-	<i>Non-Public Arbitrator</i>

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Robert M. Rosenthal, Esq.  
Public Arbitrator, Presiding Chair

7/11/01  
Signature Date

Charles Hoffman, Esq.  
Public Arbitrator

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

P. David Isenberg  
Non-Public Arbitrator

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Signature Date

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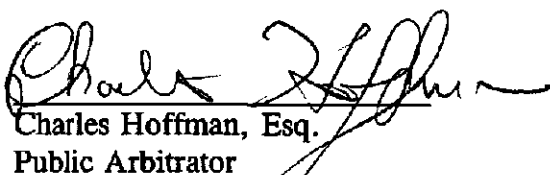
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Charles Hoffman, Esq.  
Public Arbitrator

9/04/01  
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Signature Date

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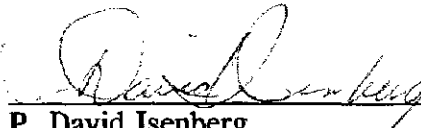
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Signature Date

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Charles Hoffman, Esq.  
Public Arbitrator

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Signature Date

  
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P. David Isenberg  
Non-Public Arbitrator

9/18/01  
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Signature Date

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