

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

National Securities Corporation, Claimant/Counter-Respondent v. Martyn A. Powell,  
Respondent/Counter-Claimant

Case Number: 99-05348

Hearing Site: Seattle, Washington

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**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent:

Patrick L. Hinton, Esq.  
Hinton & Roth  
Seattle, Washington

For Respondent/Counter-Claimant:

John A. Bender, Esq.  
Holland & Knight  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: November 29, 2000

Amended Statement of Claim filed: December 8, 2000

Claimant's Uniform Submission Agreement signed: November 29, 2000

Statement of Answer to Amended Statement of Claim and Counterclaim filed by Respondent:  
January 29, 2001

Respondent's Uniform Submission Agreement: None

Claimant's Response to Counterclaim filed: March 22, 2001

### **CASE SUMMARY**

Claimant's Statement of Claim and Amended Statement of Claim both contained the same allegations of breach of agreement and common counts involving options transactions.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and filed a Counterclaim alleging misrepresentation and omissions.

### **RELIEF REQUESTED**

Claimant's Statement of Claim and Amended Statement of Claim both contained the same allegations of compensatory damages of \$82,771.84, interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety. Respondent's Counterclaim alleged compensatory damages of \$525,000.00 and interest in the amount of 8%.

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

Respondent did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Respondent's Counterclaims are denied in their entirety.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 1,000.00
Respondent's Counterclaim	= \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm National Securities Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 3,500.00
<b>Total Member Fees</b>	<b>= \$ 5,100.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment fee for the October 29 to 31, 2002 hearings assessed to Claimant	= \$ 750.00
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Adjournment fee for the December 11 and 12, 2001 hearings assessed to Respondent	= \$ 750.00
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#### **Forum Fees and Assessments**

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: June 7, 2001 1 session	

Six (6) Hearing sessions @ \$1,200.00/session		= \$ 7,200.00
Hearings:	June 24, 2002	2 sessions
	June 25, 2002	2 sessions
	June 26, 2002	2 sessions
<b>Total Forum Fees</b>		<b>= \$ 8,400.00</b>

The Panel assessed \$4,200.00 of the forum fees to Claimant National Securities Corporation.

The Panel assessed \$4,200.00 of the forum fees to Respondent Martyn A. Powell.

#### **Fee Summary**

1. Claimant National Securities Corporation is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,100.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	<u>= \$ 4,200.00</u>
Total Fees	= \$ 11,050.00
<u>Less payments</u>	<u>= \$( 5,600.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,450.00</b>

2. Respondent Martyn A. Powell is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	<u>= \$ 4,200.00</u>
Total Fees	= \$ 5,325.00
<u>Less payments</u>	<u>= \$( 1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,750.00</b>

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

**ARBITRATION PANEL**

H. Yancey Reser, Esq.  
Kenneth J. Diamond, Esq.  
Paul A. Maffeo

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

H. Yancey Reser  
H. Yancey Reser, Esq.  
Chair, Public Arbitrator

8/22/2002  
Signature Date

Kenneth J. Diamond, Esq.  
Kenneth J. Diamond, Esq.  
Public Arbitrator

Signature Date

Paul A. Maffeo  
Paul A. Maffeo  
Non-Public Arbitrator

Signature Date

8/22/02  
Date of Service

**ARBITRATION PANEL**

H. Yancey Reser, Esq.	-	Public Arbitrator, Presiding Chair
Kenneth J. Diamond, Esq.	-	Public Arbitrator
Paul A. Maffeo	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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H. Yancey Reser, Esq.  
Chair, Public Arbitrator

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Signature Date



Kenneth J. Diamond, Esq.  
Public Arbitrator



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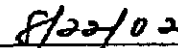
Signature Date

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Paul A. Maffeo  
Non-Public Arbitrator

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Signature Date



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Date of Service

ARBITRATION PANEL

H. Yancey Reser, Esq.	-	Public Arbitrator, Presiding Chair
Kenneth J. Diamond, Esq.	-	Public Arbitrator
Paul A. Maffeo	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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H. Yancey Reser, Esq.  
Chair, Public Arbitrator

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Signature Date

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Kenneth J. Diamond, Esq.  
Public Arbitrator

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Signature Date

  
Paul A. Maffeo  
Non-Public Arbitrator

Aug 21 2002  
Signature Date

8/22/02  
Date of Service





## Proof of Service

State of California, County of Los Angeles

I am employed in the county of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is:

**NASD Dispute Resolution, Western Regional Office.  
300 South Grand Avenue, Suite 900  
Los Angeles, California 90071-3135.**

On August 22, 2002, I served the following documents described as:

**Award, Cover Letters, and Invoice Statement for Arbitration Case No. 99-05348 on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:**

**Patrick L. Hinton, Esq., Hinton & Roth, 1001 Fourth Avenue Suite 2200, Seattle, WA. 98154,  
Fax: 206-343-6129**

**John A. Bender, Jr., Holland & Knight, LLP., 2600 Pike Tower, 520 Pike Street, Seattle, WA.  
98101, Fax: 206-623-4363**

- ☒ X I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ By Personal Service, I caused such envelope to be delivered by hand to the individuals at the addressee(s) listed.
- ☐ By overnight courier, I caused the above-referenced documents to be delivered to an overnight courier service (Federal Express), for delivery to the above addressees.
- ☒ X By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.
- ☒ X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar on this court at whose direction the service was made.

Executed this August 22, 2002, at Los Angeles, California.

*Maria P. Medina*  
Maria P. Medina