

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

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In the Matter of the Arbitration Between

**Names of Claimants**

George G. and Shirley Parella

Case No. 00-03301

Hearing Site: Boca Raton, Florida

**Names of Respondents**

Kirlin Securities, Inc.  
Matthew Laurence Zimmerman

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**REPRESENTATION OF PARTIES**

For George G. and Shirley Parella ("Parella") hereinafter collectively referred to as "Claimants": Frank J. Stanley, III, Stanley, Powers & Matyola, Bridgewater, New Jersey.

For Respondent Kirlin Securities, Inc., ("Kirlin"): Andrew Kohler, John T. McGuire, P.C., New York, New York.

Respondent Matthew Laurence Zimmerman ("Zimmerman") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: August 2, 2000.

Claimants signed the Uniform Submission Agreement: July 27, 2000.

Statement of Answer filed by Respondent Kirlin on or about: November 27, 2000.

Respondent Kirlin signed the Uniform Submission Agreement: September 18, 2000.

Statement of Answer filed by Respondent Zimmerman on or about: September 17, 2001.

Respondent Zimmerman did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following: 1) Respondent Zimmerman made material misrepresentations to Claimants; 2) Respondent Kirlin negligently hired and supervised Respondent Zimmerman; 3) Respondents breached their agreement with Claimants; 4) Respondents were negligent in handling Claimants' account; 5) Respondents breached their fiduciary duty to Claimants; 6) Respondents made unauthorized and unsuitable investments in Claimants' account; and 7) Respondents manipulated Claimants' account. The causes of action relate to the purchase and sale of government bonds.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$34,581.00, plus punitive damages of \$65,400.00, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

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

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

Respondent Zimmerman did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

Immediately prior to the presentation of closing arguments by the parties, Claimant and Respondent Kirlin informed the Panel that they had reached a settlement agreement.

Also, prior to the presentation of closing arguments by the parties, the Panel denied Respondent Zimmerman's motion to adjourn the hearing.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Zimmerman is liable and shall pay to Claimant the sum of \$12,500.00 as compensatory damages plus interest at the statutory rate as set by the Comptroller of the state of Florida from April 1, 2002 until the date of payment of the Award. Damages are awarded as a result of Respondent Zimmerman's misrepresentations and the unsuitability of the investments at issue.

Any and all other requests for relief not specifically addressed herein, including Claimants' request for punitive damages, 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 = \$ 225.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

October 4 through October 5, 2001 hearing dates, adjournment requested by Respondents Kirlin and Zimmerman. The adjournment fee of \$750.00 was waived by the arbitrators.

#### **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 arbitrators, 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: March 13, 2001	1 session
Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: February 13, 2001	1 session
October 5, 2001	1 session
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Dates: February 28, 2002	2 sessions
March 1, 2002	1 session
Total Forum Fees	= \$4,200.00

The panel has assessed \$2,100.00 of the forum fees to Respondent Kirlin.

The panel has assessed \$2,100.00 of the forum fees to Respondent Zimmerman.

**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**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
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Total Fees	= \$ 225.00
Less payments	= \$ 225.00
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent Kirlin be and hereby is solely liable for:

Member Fees	= \$3,100.00
Forum Fees	= \$2,100.00
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Total Fees	= \$5,200.00
Less payments	= \$1,600.00
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Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

Respondent Zimmerman be and hereby is solely liable for:

Forum Fees	= \$2,100.00
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Total Fees	= \$2,100.00
Less payments	= \$ 0.00
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Balance Due NASD Dispute Resolution, Inc.	= \$2,100.00

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>Alan B. Goldstein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Carmen A. Gross</i>	-	<i>Public Arbitrator</i>
<i>Delmer C. Gowing, III, Esq.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/\_\_\_\_\_  
Carmen A. Gross  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Delmer C. Gowing, III, Esq.  
Non-Public Arbitrator

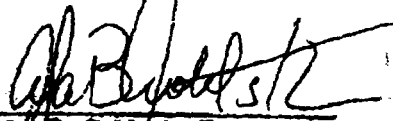
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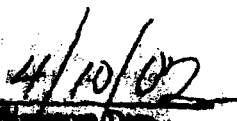
April 11, 2002

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

Arbitration No. 00-0330;  
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Concurring Arbitrators' Signatures

  
Alan B. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

Carmen A. Gross  
Public Arbitrator

Signature Date

Delmer C. Gowing, III, Esq.  
Non-Public Arbitrator

Signature Date

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

Concurring Arbitrators' Signatures

Alvin Goldstein, Esq.  
Public Arbitrator, Presiding Chair

Carmen A. Gross  
Carmen A. Gross  
Public Arbitrator

Deimer C. Gowing, III, Esq.  
Non-Public Arbitrator

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

Signature Date

4/10/02  
Signature Date

Signature Date

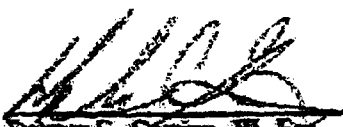
Consenting Arbitrators' Signatures

\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Carmen A. Gross  
Public Arbitrator

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

  
Daniel C. Gowing, III, Esq.  
Non-Public Arbitrator

  
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