

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Kirlin Securities, Inc., (Claimant) vs. Charles Evan Giamo, Michael John Giangregorio, Thomas E. Egan, and Jason A. Sims, (Respondents)

Case Number: 00-03446

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Kirlin Securities, Inc., hereinafter referred to as "Claimant": Isaac M. Zucker, Esq., General Counsel, Kirlin Securities, Inc., Syosset, NY. Previously represented by: Mark A. Berman, Esq., Schwarzfeld, Ganfer & Shore, LLP, New York, NY.

Respondent, Charles Evan Giamo ("Giamo"), did not appear at the hearings in this matter. Giamo originally appeared *pro se*.

Respondent, Michael John Giangregorio ("Giangregorio"), did not make an appearance in this matter.

Respondent, Thomas E. Egan ("Egan"), did not appear at the hearing in this matter. Egan originally appeared *pro se*.

Respondent, Jason A. Sims ("Sims"): M. David Sayid, Esq., Sayid and Associates LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 7, 2000.

Amended Statement of Claim filed on or about: October 3, 2000.

Reply to Sims' Counterclaim filed by Claimant on or about: January 5, 2001.

Claimant signed the Uniform Submission Agreement: August 4, 2000.

Claimant signed Revised Uniform Submission Agreement: October 2, 2000.

Statement of Answer filed by Giamo on or about: October 3, 2000.

Giamo signed the Uniform Submission Agreement: October 3, 2000.

Giangregorio did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Egan on or about: October 2, 2000.
Egan signed the Uniform Submission Agreement: October 2, 2000.

Statement of Answer filed by Sims on or about: December 1, 2000.
Counterclaim filed by Sims on or about: December 1, 2000.
Sims signed the Uniform Submission Agreement: December 19, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: breach of promissory notes by each of the Respondents.

Unless specifically admitted in his Answer, Sims denied the allegations made in the Statement of Claim and asserted the following defenses: Sims violated no written contract, no statute, no law, no rule, and no regulation in connection with the allegations set forth in the Statement of Claim; Claimant assumed the risk of its transactions; Claimant had or should have had full knowledge of all material facts concerning the securities accounts at the Claimant; the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimant waived any and all claims for relief it may otherwise have had against Sims; Claimant is estopped from asserting the purported claims set forth in the Statement of Claim; the claims are barred by Claimant's contributory fault, comparative fault, recklessness, and failure to exercise due diligence; Claimant cannot reasonably have relied upon any alleged representations set forth in the Statement of Claim; Claimant has failed to mitigate its damages; Claimant had knowledge of and assumed the risks of each of the transactions on which the Statement of Claim is based; and any and all relief sought by Claimant is barred by the doctrine of unclean hands.

In his Counterclaim, Sims asserted the following causes of action: securities fraud; common law fraud; breach of fiduciary duty; breach of the duty of good faith and fair dealing; negligence; securities rule violations; breach of contract; failure to supervise; respondeat superior; and state security law violations.

Unless specifically admitted in its reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaims fail to state a claim upon which relief can be granted; Sims and/or his wife have assumed the risk of the security transactions alleged in the Counterclaims; Sims and/or his wife authorized each of the security transactions alleged in the Counterclaims; Sims and/or his wife had or should have had full knowledge of all material facts concerning the security transactions alleged in the

Counterclaims; Sims and/or his wife's claims are barred by their contributory fault, comparative fault, recklessness, and/or failure to exercise due diligence; Sims and/or his wife cannot have reasonably relied upon any alleged misrepresentations set forth in the Counterclaims; Sims and/or his wife have not suffered any damages by reason of Claimant's actions alleged in the Counterclaims; Sims and/or his wife have failed to mitigate their alleged damages; Sims and/or his wife's claims are barred in whole or in part by the doctrines of laches, waiver, estoppel, and unclean hands; Claimant is not liable to Sims and/or his wife for any damages or other monetary relief; and the NASD does not have subject matter and personal jurisdiction over Sims' wife.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages against Giamo in the amount of \$93,119.71, plus interest at the rate of 18% per annum;
- b. Compensatory damages against Giangregorio in the amount of \$ 29,085.32, plus interest at the rate of 18% per annum;
- c. Compensatory damages against Egan in the amount of \$13,499.33, plus interest at the rate of 18% per annum;
- d. Compensatory damages against Sims in the amount of \$17,979.05, plus interest at the rate of 18% per annum;
- e. All costs and expenses, including reasonable attorneys' fees, incurred in connection with commencing and prosecuting this proceeding, in an amount to be determined by the Panel; and
- f. Such other and further relief as to the Panel may seem just and proper.

Sims requested that the Statement of Claim be denied in its entirety; that he be awarded the costs, fees, expenses, and reasonable attorneys' fees in the approximate amount of \$50,000.00, incurred in defending this claim; and such other and further relief as justice and equity require.

In his Counterclaim, Sims requested compensatory damages in the approximate amount of \$70,000.00; punitive damages in the amount of \$210,000.00; that the findings made upon the evidence adduced at the hearing of this matter be presented to appropriate securities regulators; reasonable attorneys' fees in the approximate amount of \$25,000.00; the costs and expenses of this arbitration; and such other and further relief as the Panel deems just and proper.

In its Reply to the Counterclaim, Claimant requested judgement:

- a. Dismissing, with prejudice, the Counterclaims asserted against it;
- b. Rejecting Sims' request to contact securities regulators concerning the meritless contentions;
- c. Awarding Claimant all costs and disbursements incurred by it, as well as the attorneys' fees incurred in defending against the Counterclaims; and
- d. Awarding Claimant such other, further, and different equitable and legal relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On November 13, 2000, Respondent Egan filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code. Accordingly, all claims against Egan were stayed.

On or about March 12, 2001, Claimant entered into a settlement agreement with Respondent Giamo.

On March 14, 2001, Claimant made a motion seeking an Order: (a) awarding a default judgement against Sims or, in the alternative, barring Sims from presenting any defense to Claimant's claims at the hearing; (b) Dismissing Sims' Counterclaims or, in the alternative, precluding Sims from presenting evidence in support of his Counterclaims at the hearing; and (c) awarding a default judgement against Giangregorio. During a pre-hearing conference held on November 20, 2001, the Chairperson of the Panel advised Claimant that the motion would be decided at the opening of the arbitration hearing.

After due consideration, the Panel made the following determinations with respect to Claimant's March 14, 2001 motion:

- (a) The Panel denied Claimant's request for a default judgement against Sims or, in the alternative, an Order barring Sims from presenting any defense to Claimant's claims at the hearing;
- (b) The Panel denied Claimant's request to dismiss Sims' Counterclaims or, in the alternative, preclude Sims from presenting evidence in support of his Counterclaims at the hearing, **with the exception of a claim appearing to be set forth by Sims for recovery by his wife, which the Panel dismissed, without prejudice, since Mrs. Sims was not a party to this proceeding;** and
- (c) The Panel agreed to enter an award against Giangregorio for the principal amount due under his promissory note as stated in the Statement of Claim, less credits applied, with interest.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Giangregorio has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Giangregorio present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Giangregorio did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Giangregorio be and hereby is solely liable for and shall pay to Claimant the sum of \$28,114.43 as compensatory damages, plus interest in the amount of \$7,590.00.
2. Claimant's claims against Sims are hereby dismissed in their entirety.
3. Sims' Counterclaim is hereby dismissed in its entirety.
4. All other requests for relief are hereby 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	= \$1,000.00
Counterclaim filing fee	= \$ 300.00

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, Kirlin Securities, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Panel assesses 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: November 20, 2001	1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: August 1, 2001	1 session

Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: November 27, 2001	2 sessions
November 28, 2001	2 sessions

Total Forum Fees	= \$6,075.00
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1. The Panel has assessed \$3,037.50 of the forum fees against Claimant.
2. The Panel has assessed \$3,037.50 of the forum fees against Sims.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,037.50</u>
Total Fees	= \$8,637.50
<u>Less payments</u>	<u>= \$6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,912.50

2. Sims be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 300.00
Forum Fees	= \$3,037.50
Total Fees	= \$3,337.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,912.50

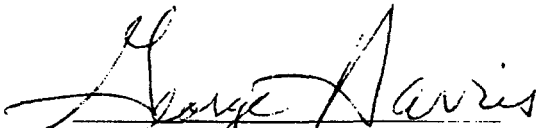
All balances are due and payable to NASD Dispute Resolution, Inc.


ARBITRATION PANEL

George I. Harris, Esq.	-	Public Arbitrator, Presiding Chair
Norman H. Rosen, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


George I. Harris, Esq.
Public Arbitrator, Presiding Chair


Signature Date

Norman H. Rosen, Esq.
Public Arbitrator

Signature Date

Jerome H. Levy
Industry Arbitrator

Signature Date

January 7, 2002

Date of Service (For NASD office use only)

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ARBITRATION PANEL

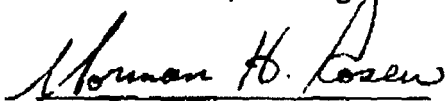
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Norman H. Rosen, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

George I. Harris, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Norman H. Rosen, Esq.
Public Arbitrator

01/06/2002

Signature Date

Jerome H. Levy
Industry Arbitrator

Signature Date

January 7, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

George I. Harris, Esq.	-	Public Arbitrator, Presiding Chair
Norman H. Rosen, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Industry Arbitrator

Concurring Arbitrators' Signatures

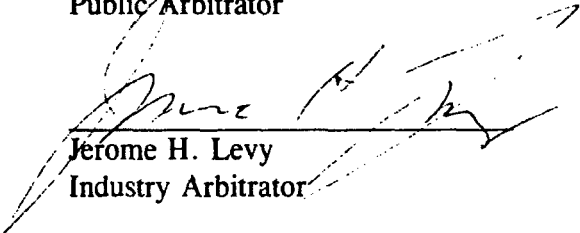
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George I. Harris, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Norman H. Rosen, Esq.
Public Arbitrator

Signature Date



Jerome H. Levy
Industry Arbitrator

Signature Date

January 7, 2002

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