

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

---

In the Matter of the Arbitration Between:

Brian Gilmartin (Claimant) v. Cantor Fitzgerald Securities and Joseph Kelly  
(Respondents)

Case Number: 00-03560

Hearing Site: New York, New York

---

Nature of the Dispute: Associated Person vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Brian Gilmartin ("Gilmartin") hereinafter referred to as "Claimant": John E. Lawlor, Esq., Mineola, NY. Previously represented by: Ted Poretz, Esq., Bingham McCutchen, formerly of Richard & O'Neil, LLP, New York, NY.

Respondent Cantor Fitzgerald Securities ("Cantor") and Joseph Kelly ("J. Kelly") hereinafter collectively referred to as "Respondents": Sean Lynch, Esq., Saul Ewing, LLP, Princeton, NJ. Previously represented by: Michele A. Daitz, Esq. and Michael A. Lampert, Esq., Saul Ewing, LLP, New York, NY and Matthew G. Leonard, Esq., Cantor Fitzgerald, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 15, 2000.

Amended Statement of Claim filed on or about: January 17, 2001.

Claimant signed the Uniform Submission Agreement: July 25, 2000.

Joint Statement of Answer filed by Respondent on or about: November 6, 2000.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: February 16, 2001.

Cantor signed the Uniform Submission Agreement: October 13, 2000.

J. Kelly signed the Uniform Submission Agreement: October 13, 2000.

**CASE SUMMARY**

In his Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: wrongful termination; breach of contract; and failure to pay commissions.

Unless specifically admitted in their Answer and Answer to the Amended Statement of Claim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$250,000.00; attorneys' fees; and punitive damages. In his Amended Statement of Claim, Claimant requested damages in the amount of \$250,000.00; cancellation of the "promissory note"; attorneys' fees; and punitive damages.

In their Answer and Answer to the Amended Statement of Claim, Respondents requested that the Panel dismiss the Statement of Claim in its entirety, and grant Respondents reasonable attorneys' fees.

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

Respondents made a motion for summary judgment. After due consideration, the Panel denied said motion.

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, and 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. Claimant's claims are hereby dismissed in their entirety.
2. Respondent Cantor is liable for and shall pay Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim 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. Accordingly, Cantor Fitzgerald Securities 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 has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: September 10, 2001 1 session	
November 26, 2002 1 session	

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$3,375.00
Pre-hearing conferences: June 12, 2001 1 session	
July 8, 2002 1 session	
September 15, 2003 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: February 11, 2004 2 sessions	
February 12, 2004 2 sessions	

Total Forum Fees	= \$8,775.00
------------------	--------------

1. The Panel has assessed \$4,387.50 of the forum fees against Claimant.
2. The Panel has assessed \$4,387.50 of the forum fees against Respondent Cantor.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$4,387.50
Total Fees	= \$4,687.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$3,262.50

*As stated in the "Award" section above, Respondent Cantor is liable and shall reimburse Claimant for the \$300.00 filing fee.*

2. Respondent Cantor is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$4,387.50</u>
Total Fees	= \$8,987.50
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$4,387.50

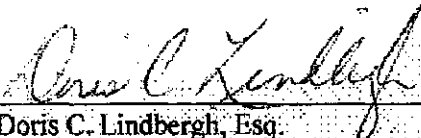
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
---

**ARBITRATION PANEL**

Doris C. Lindbergh, Esq. - Non-Public Arbitrator, Presiding Chair  
George F. Janos - Non-Public Arbitrator  
Richard J. Fish - Non-Public 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.



Doris C. Lindbergh, Esq.  
Non-Public Arbitrator, Presiding Chairperson

  
Signature Date

\_\_\_\_\_  
George F. Janos  
Non-Public Arbitrator

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

\_\_\_\_\_  
Richard J. Fish  
Non-Public Arbitrator

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

March 12, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

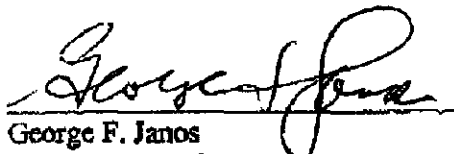
Doris C. Lindbergh, Esq.	-	Non-Public Arbitrator, Presiding Chair
George F. Janos	-	Non-Public Arbitrator
Richard J. Fish	-	Non-Public Arbitrator

**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.

\_\_\_\_\_  
Doris C. Lindbergh, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
George F. Janos  
Non-Public Arbitrator

3/10/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard J. Fish  
Non-Public Arbitrator

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

\_\_\_\_\_  
March 12, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Doris C. Lindbergh, Esq.	-	Non-Public Arbitrator, Presiding Chair
George F. Janos	-	Non-Public Arbitrator
Richard J. Fish	-	Non-Public 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.

\_\_\_\_\_  
Doris C. Lindbergh, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
George F. Janos  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Richard J. Fish  
Non-Public Arbitrator

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

\_\_\_\_\_  
March 12, 2004  
Date of Service (For NASD Dispute Resolution use only)