

Modified Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lon Weisman, (Claimant) vs. Kirlin Securities, Inc., Radame Gonzalez, Mark Pollack, David Schwartz, Jeffrey Silberman, Josephthal & Co., Inc., and Ryan Beck & Co., LLC, (Respondents)

Case Number: 00-04744

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Lon Weisman, hereinafter referred to as "Claimant": Richard W. Vallario, Esq., Attorney at Law, Nutley, NJ.

Respondent, Kirlin Securities, Inc. ("Kirlin"), did not appear at the hearing in this matter. Previously represented by: Ted Dragon, Esq., Kirlin Securities, Inc., Syosset, NY and Christopher Brennan, Esq., Smith, Buss & Jacobs, LLP, New York, NY, respectively.

Respondents, Radame Gonzalez ("Gonzalez") and Mark Pollack ("Pollack"), did not appear at the hearing in this matter. Previously represented by: Tristan C. Loanzon, Esq., Kalkines, Arky, Zall & Bernstein LLP, New York, NY.

Respondent, David Schwartz ("Schwartz"), did not appear at the hearing in this matter. Previously represented by: Emilia M. De Meo, Esq., Emilia M. De Meo Law Offices, L.L.C., Short Hills, NJ and Andrew Giles Freda, Esq., Edwards & Caldwell, Hawthorne, NJ, respectively.

Respondent, Jeffrey Silberman ("Silberman"), did not appear at the hearing in this matter. Mr. Silberman originally appeared *pro se*.

Respondent, Josephthal & Co., Inc. ("Josephthal"), did not appear at the hearing in this matter. Previously represented by: Brian J. Neville, Esq., Law Offices of Brian J. Neville, P.C., New York, NY and John Bersin, Esq., Associate General Counsel, Josephthal & Co., Inc., New York, NY.

Respondent, Ryan Beck & Co., LLC ("Ryan"), did not appear at the hearing in this matter. Previously represented by: Thomas M. Licata, Esq., Lynch & Lynch, L.L.P., Paramus, NJ and Garrett J. Dombrowski, Esq., First Vice President and Director of Compliance, Ryan Beck & Co., LLC, Livingston, NJ.

CASE INFORMATION

Statement of Claim filed on or about: October 23, 2000.
Amended Statement of Claim filed on or about: May 16, 2001.
Claimant signed the Uniform Submission Agreement: May 16, 2001.

Statement of Answer filed by Kirlin on or about: January 25, 2001.
Statement of Answer to Amended Statement of Claim filed by Kirlin on or about: May 31, 2001.
Kirlin signed the Uniform Submission Agreement: February 9, 2001.

Joint Statement of Answer filed by Gonzalez and Pollack on or about: February 13, 2001.
Gonzalez signed the Uniform Submission Agreement: February 9, 2001.
Pollack signed the Uniform Submission Agreement: February 9, 2001.

Statement of Answer filed by Schwartz on or about: February 27, 2001.
Schwartz signed the Uniform Submission Agreement: February 27, 2001.

Statement of Answer filed by Silberman on or about: January 19, 2001.
Silberman signed the Uniform Submission Agreement: January 19, 2001.

Statement of Answer filed by Josephthal on or about: October 3, 2001.
Josephthal did not sign a Uniform Submission Agreement.

Statement of Answer filed by Ryan on or about: January 24, 2001.
Statement of Answer to Amended Statement of Claim filed by Ryan on or about: May 25, 2001.
Ryan signed the Uniform Submission Agreement: January 24, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: excessive trading; unsuitability; failure to properly supervise; violation of federal securities laws; over-concentration of stock; and misrepresentations. Claimant's claim involved the stock of Superconductor Technology, Inc., as well as other unspecified securities.

Unless specifically admitted in their Answer, Gonzalez and Pollack denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant is a sophisticated, experienced investor who knowingly undertook the risk he now claims was foisted upon him unwittingly; Claimant authorized all of the trades that he now seeks to repudiate; Claimant sought high returns, which by definition require greater risk; and Respondents did not insure Claimant against losses.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$325,000.00, plus punitive damages in the amount of \$175,000.00, interest, loss of investment opportunity, attorneys' fees, and the costs of this action.

Gonzalez and Pollack requested that Claimant's claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

By Notice dated December 13, 2001, Claimant advised NASD Dispute Resolution that he was withdrawing and dismissing all claims against Respondent Schwartz, with prejudice.

By letter dated March 26, 2002, Claimant advised NASD Dispute Resolution that he had entered into a settlement agreement with Respondent Ryan.

By Notice dated July 8, 2002, Claimant advised NASD Dispute Resolution that he was withdrawing and dismissing all claims against Respondent Silberman, with prejudice.

By letter dated July 10, 2002, Claimant advised NASD Dispute Resolution that he had entered into settlement agreement with Respondents Kirlin and Josephthal.

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

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. Gonzalez and Pollack be and hereby are jointly and severally liable to Claimant in the amount of \$137,000.00 as compensatory damages, offset by all amounts paid by other Respondents in settlement with Claimant. Since the total amount paid to Claimant in settlement by other Respondents exceeds said \$137,000.00, there is no monetary Award actually due and payable to Claimant against Gonzalez and Pollack.
2. Claimant's request for punitive damages is hereby denied.
3. Kirlin, Gonzalez, Pollack, Josephthal, and Ryan be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
4. All other requests for relief are hereby 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Kirlin Securities, Inc., Josephthal & Co., Inc., and Ryan Beck & Co., LLC are parties.

Kirlin Securities, Inc.

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

Josephthal & Co., Inc.

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

Ryan Beck & Co., LLC

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

Adjournment Fees

Adjournments requested during these proceedings:

December 17, 18 & 19, 2001, adjournment by Claimant	= \$1,125.00
March 11, 12 & 13, 2002, adjournment by Josephthal	= WAIVED

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: December 7, 2001 1 session	

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: July 24, 2001 1 session	
March 11, 2002 1 session	

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: July 9, 2002 2 sessions	
Total Forum Fees	= \$4,950.00

1. The Panel has assessed \$2,700.00 of the forum fees jointly and severally against Kirlin, Gonzalez, Pollack, Josephthal, and Ryan.
2. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against Kirlin, Gonzalez, and Pollack.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= <u>\$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	= <u>\$2,550.00</u>
Refund Due Claimant	= \$1,125.00

As stated in the "Award" section above, Kirlin, Gonzalez, Pollack, Josephthal, and Ryan are jointly and severally liable and shall reimburse Claimant for the \$300.00 filing fee.

2. Kirlin be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Josephthal be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Ryan be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Kirlin, Gonzalez, Pollack, Josephthal, and Ryan be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$2,700.00</u>
Total Fees	= \$2,700.00
<u>Less payments</u>	= <u>\$2,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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6. Kirlin, Gonzalez, and Pollack be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,250.00
<u>Less payments (made by Pollack)</u>	= <u>\$3,850.00</u>
Refund Due Pollack	= \$1,600.00

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

NASD Dispute Resolution, Inc.

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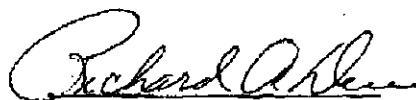
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ARBITRATION PANEL

Richard A. Dice, Esq.	-	Public Arbitrator, Presiding Chair
Eric P. Nachman, Esq.	-	Public Arbitrator
Jean Margo Reid, Esq.	-	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.



Richard A. Dice, Esq.
Public Arbitrator, Presiding Chair

10-29-02

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

Jean Margo Reid, Esq.
Non-Public Arbitrator

Signature Date

November 13, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Eric P. Nachman, Esq.	-	Public Arbitrator
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Richard A. Dice, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Eric P. Nachman, Esq.
Public Arbitrator

11/7/02
Signature Date

Jean Margo Reid, Esq.
Non-Public Arbitrator

Signature Date

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Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Concurring Arbitrators' Signatures

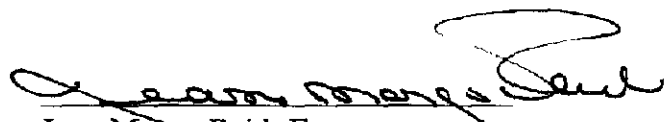
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Richard A. Dice, Esq.
Public Arbitrator, Presiding Chair

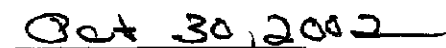
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Eric P. Nachman, Esq.
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Non-Public Arbitrator



Signature Date

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