

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

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In the Matter of the Arbitration Between:

Sidney Itkin, (Claimant) vs. Kirlin Securities, Inc. and George R. Gonzalez, (Respondents)

Case Number: 00-05612

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Sidney Itkin, hereinafter referred to as "Claimant": James Wasserman, Esq., Vladeck, Waldman, Elias & Engelhard, P.C., New York, NY.

Respondents, Kirlin Securities, Inc. ("Kirlin") and George R. Gonzalez ("Gonzalez"), hereinafter collectively referred to as "Respondents": John T. McGuire, Esq., John T. McGuire, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 14, 2000.

Claimant signed the Uniform Submission Agreement: December 7, 2000.

Statement of Answer filed by Respondents on or about: February 8, 2001.

Kirlin did not sign a Uniform Submission Agreement.

Gonzalez did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; misrepresentations; failure to supervise; material omissions; and failure to diversify portfolio. Claimant's claim involved the bonds of Trump Atlantic City, Iridium LLC, and Optel, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set forth any cause of action against Respondents; Claimant authorized and directed each and every transaction in his account; Respondents fully and accurately apprised Claimant of all risks and potential rewards associated with each investment made in his account; Claimant

ratified each and every transaction in his account; Claimant waived all claims against Respondents; Claimant is estopped by his own conduct from asserting the claims set forth in his Statement of Claim; each investment made for Claimant's account at Kirlin was suitable given Claimant's financial status, stated investment objectives, and investment experience; Respondents did not breach any fiduciary, or other, duty they may be determined to have owed Claimant; Respondents did not commit any fraud or make any misrepresentation to Claimant; Respondents did not violate any applicable law or rule; and Gonzalez was appropriately supervised at all times by Kirlin.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$135,477.50, plus punitive damages in the amount of \$50,000.00, interest, costs, and attorneys' fees.

Respondents requested that Claimant's Statement of Claim be dismissed in its entirety.

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

Prior to the conclusion of the hearing, Claimant and Respondents agreed to enter into a Stipulated Award. This Stipulated Award is attached hereto, and is being submitted to the Panel for its consideration.

Kirlin and Gonzalez did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

#### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of all parties for entry of an Award, the written stipulation thereto, the Panel hereby grants the motion and enters this Award granting the following relief:

1. Claimant's claims against Respondent Gonzalez are hereby dismissed.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gonzalez's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gonzalez must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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	= \$ 300.00
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#### **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, 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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: June 13, 2001	1 session
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$375.00 of the forum fees against Claimant.
2. The Panel has assessed \$375.00 of the forum fees against Kirlin.
3. The Panel has assessed \$375.00 of the forum fees against Gonzalez.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$ 750.00

2. Kirlin be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$4,975.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

3. Gonzalez be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

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

**ARBITRATION PANEL**

Arthur Mantis	-	Public Arbitrator, Presiding Chair
Charles F. Brennan, Esq.	-	Public Arbitrator
Scott L. Fagin	-	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.

Arthur Mantis  
Arthur Mantis  
Public Arbitrator, Presiding Chair

Jan 12, 2002  
Signature Date

Charles F. Brennan, Esq.  
Charles F. Brennan, Esq.  
Public Arbitrator

Signature Date

Scott L. Fagin  
Scott L. Fagin  
Industry Arbitrator

Signature Date

January 18, 2002  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Arthur Mantis	-	Public Arbitrator, Presiding Chair
Charles F. Brennan, Esq.	-	Public Arbitrator
Scott L. Fagin	-	Industry Arbitrator

Concurring Arbitrators' Signatures

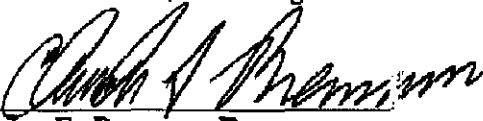
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Arthur Mantis  
Public Arbitrator, Presiding Chair

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Signature Date

  
Charles F. Brennan, Esq.  
Public Arbitrator

1/10/02  
Signature Date

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Scott L. Fagin  
Industry Arbitrator

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Signature Date

January 18, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Charles F. Brennan, Esq.	-	Public Arbitrator
Scott L. Fagin	-	Industry Arbitrator

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Arthur Mantis  
Public Arbitrator, Presiding Chair

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Signature Date

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Charles F. Brennan, Esq.  
Public Arbitrator

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Signature Date

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Scott L. Fagin  
Industry Arbitrator

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Signature Date

January 18, 2002

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Date of Service (For NASD office use only)

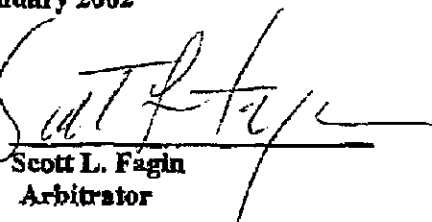
## STIPULATED AWARD

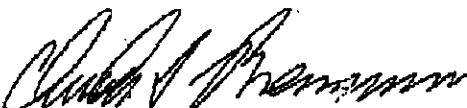
AWARD issued this \_\_\_\_ day of January 2002. The arbitrators appointed to resolve this matter upon the Motion of Respondent George Gonzalez, receiving no opposition From Claimant Sidney Itkin, hereby orders that this matter, NASD Arbitration No. I-R-00-05612 be dismissed against this Respondent and;

FURTHER, that the Central Registration Depository and/or the National Association of Securities Dealers Regulation, Inc. hereby expunge any reference of this matter from the NASD Form U-5 currently on file for George Gonzalez, CRD No. 1266143.

So Ordered this \_\_\_\_ day of January 2002

  
Arthur Mantis  
Chairman

  
Scott L. Fagin  
Arbitrator

  
Charles F. Brennan, Esq.  
Arbitrator