

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Claimants

Seymour Zisook, individually and as
Trustee of the Seymour Zisook Revocable Trust

Case Number: 01-00136

v.

Respondents

Kirlin Securities, Inc., and
Robert A. Jones

Hearing Site: Chicago, Illinois

Cross-Claimant

Robert Jones

v.

Cross-Respondent

Kirlin Securities, Inc.

REPRESENTATION OF PARTIES

Claimant Seymour Zisook, individually and as trustee of the Seymour Zisook Revocable Trust ("Zisook"): Kenneth A. Elan, Esq. with offices located in New York, New York.

Respondent/Cross-Respondent Kirlin Securities, Inc. ("Kirlin Securities"): Paul J. Delmore, Esq. of the firm Hayes, Simpson, & Greene, LLP located in San Diego, California on the claims asserted by Zisook. Isaac M. Zucker, Esq. in-house counsel for Kirlin Securities located in Syosset, New York represented Kirlin Securities on the Cross-Claim.

Respondent/Cross-Claimant Robert A. Jones ("Jones"): Anthony M. Englese, Esq. with offices located in San Francisco, California. Originally represented by Paul J. Delmore, Esq.

CASE INFORMATION

Statement of Claim filed on or about: January 09, 2001

Zisook signed the Uniform Submission Agreement: January 02, 2001

Joint Statement of Answer and Motion to Dismiss filed by Kirlin Securities and Jones on or about: March 14, 2001

Kirlin Securities signed the Uniform Submission Agreement: March 20, 2001

Statement of Answer filed by Jones on or about: March 12, 2001

Jones signed the Uniform Submission Agreement: March 09, 2001

Cross-Claim filed by Jones on or about: May 06, 2002

Statement of Answer and Motion to Dismiss Cross-Claim filed by Kirlin Securities on or about: June 27, 2002

Compilation of Attorney's Fees and Costs filed by Jones on or about: September 10, 2002

Post-Hearing Brief on Choice of Law and Legislative Intent of Section 2802 of the California Labor Code filed by Kirlin Securities on or about: September 20, 2002

Post-Hearing Brief on Choice of Law and Legislative Intent of Section 2802 of the California Labor Code filed by Jones on or about: September 20, 2002

CASE SUMMARY

Zisook asserted the following causes of action:

Against Jones:

- Violation of the Know Your Customer Rule
- Suitability
- Unauthorized Trading
- Churning
- Failure to Disclose risks of trading on margin
- Breach of Fiduciary Duty
- Negligence and/or Recklessness

Against Kirlin Securities:

- *Respondeat Superior*

The causes of action relate to the purchase of the Reliance Group Holdings bonds.

Unless specifically admitted in their Answer, Kirlin Securities and Jones denied the allegations made in the Statement of Claim and asserted the following defenses:

- Jones acted within the aggressive investment objectives of Zisook
- Any and all losses were due to unforeseen decline in the bond market and the market in general

- Zisook fails to state a claim upon which relief may be granted
- Comparative fault
- Zisook assumed the risk by authorizing each transaction
- Any wrongful acts committed by Jones were beyond his scope of employment
- Zisook failed to mitigate his losses by choosing not to close his account
- Zisook is estopped from asserting any claims because he authorized and/or ratified each trade

Jones asserted the following causes of action against Kirlin:

- Indemnification pursuant to the California Labor Code

Unless specifically admitted in its Answer, Kirlin Securities and Jones denied the allegations made and asserted the following defenses:

- Association agreement between Kirlin Securities and Jones entitles Kirlin Securities to set-offs from Jones' commissions as indemnification for any and all loss, liability, claim, damage and expense whatsoever (including, but not limited to attorney's fees and any and all expenses incurred in investigating, preparing or defending against any customer complaint)...

RELIEF REQUESTED

Zisook requested:

Compensatory Damages	\$200,000.00
Margin Interest	\$ 7,700.00
Interest	Not specified
Attorneys' Fees	Not specified
Other Costs	Not specified
Other Monetary/Non-Monetary Relief if any:	Refund of commissions paid to Kirlin Securities and Jones and any further relief the panel may deem appropriate

Kirlin Securities requested:

Attorneys' Fees	Indemnification from Jones
Other Costs	Indemnification from Jones
Other Monetary/Non-Monetary Relief if any:	Denial of all causes of action alleged in the Statement of Claim and Dismissal of Cross-Claim

Jones Requested:

Compensatory Damages

Attorneys' Fees

Other Costs

Other Monetary/Non-Monetary Relief if any:

Payment of withheld
compensation in the amount of
\$ 17,000.00

\$ 23,267.05

\$ 1,454.60

Denial of all causes of action
alleged in the Statement of
Claim, Expungement of CRD
Record, indemnification, and
any further relief the panel
deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On May 06, 2002 Jones filed a submission entitled "Counterclaim." However, the claims asserted in the submission are against co-Respondent Kirlin Securities. As a result the submission has been treated as a Cross-Claim by NASD and the panel.

Kirlin Securities and Jones' March 14, 2001 Joint Motion to Dismiss Statement of Claim is denied.

At hearing Respondent Kirlin Securities presented a Motion for Dismissal of itself as a respondent. The panel denies that motion.

At hearing Respondent Kirlin Securities presented a Motion for Dismissal of the Statement of Claim. The panel denies that motion.

At hearing Respondent Kirlin Securities presented a Motion for Dismissal of the Cross-Claim. The panel denies that motion.

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. Any and all claims asserted by Seymour Zisook, individually and as trustee of the Seymour Zisook Revocable Trust against Kirlin Securities, Inc. and Robert A. Jones are denied in their entirety.
2. Any and all claims asserted by Robert A. Jones against Kirlin Securities, Inc. are denied in their entirety.
3. Any and all relief not specifically addressed herein is 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
Cross-Claim filing fee	= \$ 125.00

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. Kirlin Securities, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$2,500.00</u>
Total	= \$4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Kirlin Securities and Jones requested adjournment of the December 03-04, 2001 hearing dates	= \$1,125.00
Kirlin Securities and Jones requested adjournment of the June 04-05, 2002 hearing dates	= \$1,500.00
Kirlin Securities and Jones requested adjournment of the July 22-24, 2002 hearing dates	= waived by panel

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 Panel at \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
October 24, 2001	1 session
June 10, 2002	1 session
Four (4) Hearing sessions at \$1,125.00	= \$4,500.00
Hearing Dates:	
September 04, 2002	2 sessions
September 05, 2002	2 sessions
Total Forum Fees	= \$6,750.00

1. The Panel has assessed \$3,375.00 of the forum fees to Seymour Zisook, individually and as trustee of the Seymour Zisook Revocable Trust.
2. The Panel has assessed \$3,375.00 of the forum fees to Kirlin Securities, Inc. and Robert A. Jones, jointly and severally

FEE SUMMARY

1. Seymour Zisook, individually and as trustee of the Seymour Zisook Revocable Trust, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

2. Kirlin Securities, Inc. and Robert A. Jones are jointly and severally liable for:

Forum Fees	= \$3,375.00
Adjournment Fees	= \$2,625.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

3. Kirlin Securities, Inc. is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

4. Robert A. Jones is solely liable for:

Cross-claim Filing Fee	= \$ 125.00
Total Fees	= \$ 125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 125.00

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

ARBITRATION PANEL

Kennth N. Adamson, Esq. - Public Arbitrator, Presiding Chairperson

Nicolaus Bruns, Jr. - Public Arbitrator

James A. Hume - Non-Public Arbitrator

NASD Dispute Resolution, Inc.

Arbitration No. 01-00136

Award Page 7 of 7

Concurring Arbitrators' Signatures

Kennth N. Adamson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Nicolaus Bruns, Jr.
Public Arbitrator

Signature Date

James A. Hume
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution, Inc.

Arbitration No. 01-00136

Award Page 7 of 7

RECEIVED
OCT 31 2002

Concurring Arbitrators' Signatures

Kenneth N. Adamson

Kenneth N. Adamson, Esq.

Public Arbitrator, Presiding Chairperson

10/28/02

Signature Date

Nicolaus Bruns, Jr.

Public Arbitrator

Signature Date

James A. Hume

Non-Public Arbitrator

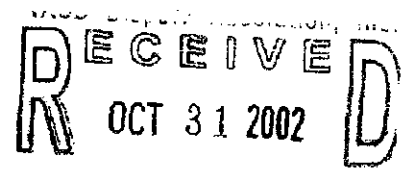
Signature Date

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

NASD Dispute Resolution, Inc.

Arbitration No. 01-00136

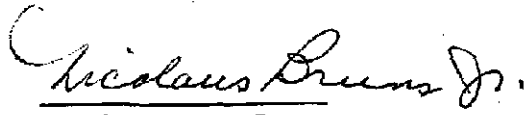
Award Page 7 of 7



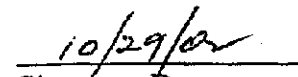
Concurring Arbitrators' Signatures

Kennth N. Adamson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Nicolaus Bruns, Jr.
Public Arbitrator



Signature Date

James A. Hume
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution, Inc.

Arbitration No. 01-00136

Award Page 7 of 7

Concurring Arbitrators' Signatures

Kennth N. Adamson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Nicolaus Bruns, Jr.
Public Arbitrator

Signature Date

James A. Hume
James A. Hume
Non-Public Arbitrator

10-28-02
Signature Date

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