

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Anthony Zockoll, Claimant v. Kimberly Securities, Inc., Kimberly Misuraca, and Philip J. Hourican, Respondents

Case Number: 01-01086

Hearing Site: Las Vegas, Nevada

REPRESENTATION OF PARTIES

For Claimant:

P. Sterling Kerr, Esq.
Kerr & Associates
Las Vegas, Nevada

For Respondents:

Charles M. O'Rourke, Esq.
Law Offices of
Charles M. O'Rourke
Woodbury, New York

CASE INFORMATION

Statement of Claim filed: February 28, 2001

Claimant's Uniform Submission Agreement signed: November 2, 2000

Joint Statement of Answer filed by Respondents Kimberly Securities, Inc. and Kimberly Misuraca: May 21, 2001

Statement of Answer filed by Respondent Philip J. Hourican: October 1, 2001

CASE SUMMARY

Claimant alleged misrepresentation, suitability, breach of fiduciary duty, and mismanagement.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested actual damages in the sum of \$110,000.00, interest, arbitration costs, and attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and reimbursement for arbitration costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On January 16, 2002, Respondents Kimberly Securities, Inc., Kimberly Misuraca, and Philip J. Hourican filed their motion to compel Claimant to produce further documents. By the Order on Prehearing Discovery Motion dated February 7, 2002, the Arbitration Chairperson granted the motion, in part, and ordered Claimant to submit a written affirmation under Section II(C) of the NASD Discovery Guide.

On June 5, 2002, at the close of evidence, Respondent Philip J. Hourican moved for an order of expungement of any information about the Claimant's claim against him or of these proceedings from the Central Registration Depository. The panel granted the Motion for Expungement as part of the Award.

Respondents Kimberly Securities, Inc., Kimberly Misuraca, and Philip J. Hourican did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The parties 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety and dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.

- 3) All other relief requested and not expressly granted is denied.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Philip J. Hourican's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Philip J. Hourican must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Kimberly Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, February 26, 2002 – February 28, 2002 adjournment requested by Claimant	
Fee waived by the Panel	= \$ 0.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: February 7, 2002 1 session	

1 Pre-hearing conference session with the Panel @ \$ 1,125.00/session = \$ 1,125.00
Pre-hearing conference: October 15, 2001 1 session

5 Hearing sessions @ \$ 1,125.00/session = \$ 5,625.00
Hearings: June 4, 2002 2 sessions
June 5, 2002 3 sessions

Total Forum Fees = \$ 7,200.00

1. The Panel assessed \$ 3,600.00 of the forum fees to Claimant Anthony Zockoll.
2. The Panel assessed \$ 3,600.00 of the forum fees jointly and severally to Respondents Kimberly Securities, Inc., Kimberly Misuraca, and Philip J. Hourican.

Fee Summary

1. Claimant Anthony Zockoll is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,900.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,475.00
2. Respondent Kimberly Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Less payments	= \$(2,100.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,500.00
3. Respondents Kimberly Securities, Inc., Kimberly Misuraca, and Philip J. Hourican are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,600.00

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

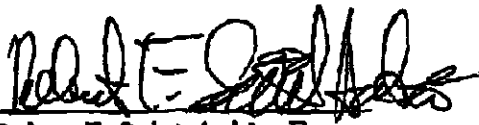
ARBITRATION PANEL

Edwin C. Shiver, Esq.	-	Public Arbitrator, Presiding Chair
Robert F. Saint-Aubin, Esq.	-	Public Arbitrator
Dean C. Abraham	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edwin C. Shiver, Esq.
Chair, Public Arbitrator

Signature Date



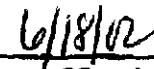
Robert F. Saint-Aubin, Esq.
Public Arbitrator



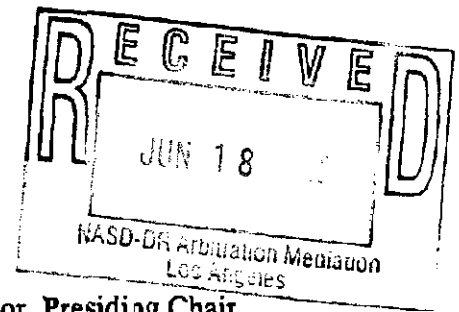
Signature Date

Dean C. Abraham
Non-Public Arbitrator

Signature Date



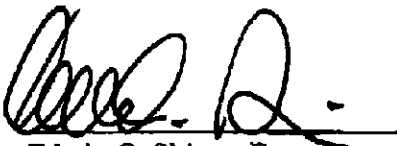
Date of Service



ARBITRATION PANEL

Edwin C. Shiver, Esq.	-	Public Arbitrator, Presiding Chair
Robert F. Saint-Aubin, Esq.	-	Public Arbitrator
Dean C. Abraham	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Edwin C. Shiver, Esq.
Chair, Public Arbitrator

06/14/2002
Signature Date

Robert F. Saint-Aubin, Esq.
Public Arbitrator

Signature Date

Dean C. Abraham
Non-Public Arbitrator

Signature Date

6/18/02
Date of Service