

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

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In the Matter of the Arbitration Between:

Jeanne M. Welsh, (Claimant) vs. Kirlin Securities, Inc. and Brian J. Alton, (Respondents)

Case Number: 01-02135

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Jeanne M. Welsh, hereinafter referred to as "Claimant": Joseph F. Keenan, Esq., McCanliss & Early, LLP, New York, NY.

Respondents, Kirlin Securities, Inc. ("Kirlin") and Brian J. Alton ("Alton"), hereinafter collectively referred to as "Respondents", did not make appearances in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 2001.

Claimant signed the Uniform Submission Agreement: April 26, 2001.

Kirlin did not file a Statement of Answer or sign a Uniform Submission Agreement.

Alton did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; churning; common law fraud; control person liability; failure to supervise; respondeat superior liability; negligence; breach of fiduciary duty; and breach of contract. Claimant's claim involved Brazos Sportswear bonds; the stocks of California Amplifier Inc., Net Currents Inc., and Secure Computing Corporation; and other, unspecified securities.

### **RELIEF REQUESTED**

Claimant requested:

- a. Compensatory damages in the amount of \$60,000.00;
- b. Interest;
- c. Recovery for the monies Claimant would have received if her account was well managed; and
- d. Other damages to be established at the arbitration hearing, as well as such other relief as the Panel deems appropriate, including costs, disbursements, and attorneys' fees.

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

By letter dated October 30, 2001, Claimant informed NASD Dispute Resolution, Inc. that she had entered into a settlement agreement with Respondent Kirlin.

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

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

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. Alton be and hereby is solely liable for and shall pay to Claimant the sum of \$12,277.56 as compensatory damages, plus interest at the rate of 9% accruing from March 30, 2001 until paid.

2. Alton be and hereby is solely liable for and shall pay to Claimant the sum of \$15,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to Republic New York Securities v. Lloyd (IAS Part 56), PaineWebber v. Bybyk, 81 F.3d 1193, 1202, and Patricia Parker v. Gary Goldberg & Company, NASD Case No. 94-02670, as argued in Claimant's post-hearing submission.
3. Alton be and hereby is solely liable for and shall pay to Claimant the sum of \$225.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. 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	= \$ 225.00
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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	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **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 \$750.00	= \$ 750.00
Pre-hearing conference:	November 19, 2001	1 session

One (1) Hearing session x \$750.00	= \$ 750.00
<u>Hearing Date:</u> January 3, 2002 1 session	
Total Forum Fees	= \$1,500.00

The Panel has assessed all of the forum fees against Alton.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 750.00

*As stated in the "Award" section above, Alton is liable and shall reimburse Claimant for the \$225.00 filing fee.*

2. Kirlin be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$1,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,100.00

3. Alton be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,500.00
Total Fees	= \$1,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00


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

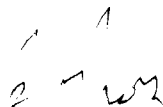
**ARBITRATION PANEL**

Eric P. Nachman, Esq.	-	Public Arbitrator, Presiding Chair
Lotte Fields	-	Public Arbitrator
Ruth Heisler	-	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.

  
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Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

\_\_\_\_\_  
Lotte Fields  
Public Arbitrator

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

\_\_\_\_\_  
Ruth Heisler  
Industry Arbitrator

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

February 20, 2002  
Date of Service (For NASD office use only)

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Lotte Fields	-	Public Arbitrator
Ruth Heisler	-	Industry Arbitrator

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Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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*Lotte Fields*  
Lotte Fields  
Public Arbitrator

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*2/8/02*  
Signature Date

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Ruth Heisler  
Industry Arbitrator

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Signature Date

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Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date


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Lotte Fields  
Public Arbitrator

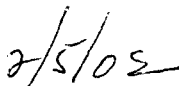
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Signature Date

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Ruth Heisler  
Industry Arbitrator

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