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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-04602

Kenneth T. Potter, Individually and on behalf of  
Ken T. Potter R/O IRA  
Ken T. Potter and Diane D. Potter, JTWROS  
Ken T. Potter IRA  
Diane D. Potter, Individually and on behalf of  
Diane D. Potter R/O IRA  
Diane and Lynette Potter JT  
Marilyn B. David, Diane D. Potter and David H. David, JTWROS

Names of the Respondents

Hearing Site: Boca Raton, Florida

K.W. Brown Investments  
Kenneth Brown

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Kenneth T. Potter, Individually and on behalf of Ken T. Potter R/O IRA, Ken T. Potter and Diane D. Potter, JTWROS, Ken T. Potter IRA, Diane D. Potter, Individually and on behalf of Diane D. Potter R/O IRA, Diane and Lynette Potter JT, Marilyn B. David, Diane D. Potter and David H. David, JTWROS, hereinafter collectively referred to as "Claimants": Glenn D. Kelley, Esq., Kelley & Warren, P.A., West Palm Beach, Florida.

For K.W. Brown Investments ("K.W. Brown") and Kenneth Brown ("Brown"), hereafter collectively referred to as "Respondents": Russell L. Forkey, Esq., Russell L. Forkey, P.A., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 2, 2002.

Claimants Kenneth T. Potter and Diane D. Potter signed the Uniform Submission Agreement: July 29, 2002.

Claimants Marilyn B. David and David H. David signed the Uniform Submission Agreement: July 27, 2002.

Claimant Lynette Potter signed the Uniform Submission Agreement: September 5, 2002.

Motion to Dismiss for Lack of Jurisdiction and Statement of Answer filed by Respondents on or about: December 10, 2002.

Respondents K.W. Brown and Brown did not file executed Uniform Submission Agreements.

Response and Memorandum of Law in Opposition to Respondents' Motion to Dismiss filed by Claimants on or about: August 7, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) common law fraud; 2) breach of fiduciary duty; 3) negligence, gross negligence and negligent supervision; 4) breach of contract; and, 5) violation of Fla. Stat. Chapter 517. The causes of action relate to the purchase and sale of various stocks including, but not limited to, Advanced Fibre Communications Co., Oracle Corporation, Sun Microsystems, Security Dynamics Tech Com., Compaq Computer Corp., World Access Inc., Axent Technologies, Aspect Telecommunications Corp., Premisys Communications, Chiron and Summit Technology in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages, including well-managed account damages, in the amount of \$3,000,000.00, punitive damages, costs and that the Panel recommend an award of attorney's fees in an amount to be determined by a court of competent jurisdiction pursuant to Florida Statutes, Chapter 517.

Respondents requested that the Statement of Claim be dismissed in its entirety, an award of attorney's fees and such other and further relief as the Panel deemed just and proper.

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

Respondents K.W. Brown and Brown did not file with NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about September 16, 2003, after hearing oral argument on Respondents' Motion to Dismiss for Lack of Jurisdiction, the Panel issued an order that denied Respondents' motion.

On January 28, 2004, during the final hearings for this matter, the parties informed the Panel that they had reached a settlement and that, as part of the settlement agreement, they would be submitting a proposed Stipulated Award.

On May 19, 2004, the parties submitted to NASD Dispute Resolution a Stipulation for Settlement, wherein the Claimants dismissed, with prejudice, this action against Respondents. In addition, Claimants stipulated and agreed that, after review of the discovery provided by Respondents in this matter, they had determined that their filing of claims against Respondents was factually impossible or clearly erroneous. Claimants therefore withdraw all allegations of wrongdoing against Respondents Brown and Brown Investments, in addition to dismissing them, with prejudice. Accordingly, Claimants and Respondents hereby stipulate and agree to a request for the entry of an award directing the expungement of the NASD Central Registration Depository (the "CRD") records of Respondents K.W. Brown and Brown.

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

### **AWARD**

After considering the pleadings and the Stipulation for Settlement with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Brown and K.W. Browns' U-4 and registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Brown and K.W. Brown 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 will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$500.00

#### **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. Accordingly, K.W. Brown is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### **Adjournment Fees**

No requests for adjournments were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

#### **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:

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00	= \$4,800.00
Pre-hearing conferences: May 13, 2003 1 session	

September 5, 2003 1 session  
September 16, 2003 1 session  
November 21, 2003 1 session

Ten (10) Hearing sessions with the Panel @ \$1,200.00 = \$12,000.00

Hearing Dates: November 18, 2003 2 sessions  
November 19, 2003 2 sessions  
November 20, 2003 2 sessions  
January 27, 2004 3 sessions  
January 28, 2004 1 session

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Total Forum Fees = \$16,800.00

The Panel has assessed \$8,400.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$8,400.00 of the forum fees jointly and severally to Respondents.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

#### Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 8,400.00
Total Fees	= \$ 8,900.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

Respondent K.W. Brown is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Brown and K.W. Brown are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,400.00
Total Fees	= \$8,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,400.00

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

**ARBITRATION PANEL**

*Stuart Bruce Klein, Esq.*

John E. Sutton

**Dale Berman**

- *Public Arbitrator, Presiding Chairperson*

Public Arbitrator

- *Non-Public Arbitrator*

### Concurring Arbitrators' Signatures

15

**Stuart Bruce Klein, Esq.**

Public Arbitrator, Presiding Chairperson

05/21/04

Signature Date

15

John E. Sutton

## Public Arbitrator

05/25/04

Signature Date

15

## Dale Berman

### Non-Public Arbitrator

05/24/04

Signature Date

06/9/04

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

NASD Dispute Resolution  
Arbitration No. 02-04602  
Stipulated Award Page 5

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*John E. Sutton*

*Dale Berman*

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*Public Arbitrator, Presiding Chairperson*

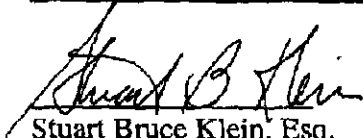
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*Public Arbitrator*

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*Non-Public Arbitrator*

Concurring Arbitrators' Signatures



*Stuart Bruce Klein, Esq.*

*Public Arbitrator, Presiding Chairperson*

*5/21/04*

*Signature Date*

*John E. Sutton*

*Public Arbitrator*

*Signature Date*

*Dale Berman*

*Non-Public Arbitrator*

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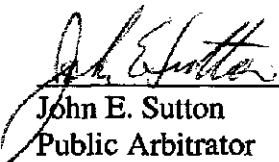
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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John E. Sutton  
Public Arbitrator

MAY 25, 2004  
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Signature Date

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Dale Berman  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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Dale Berman  
Non-Public Arbitrator

*5/24/04*  
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Signature Date

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