

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert L. Alphin, Claimant v. Kimberly Securities, Inc., Kimberly Jean Misaraca, and Noel J. Belmonte, Respondents

Case Number: 02-04739

Hearing Site: Salt Lake City, Utah

REPRESENTATION OF PARTIES

For Claimant:

Mark W. Pugsley, Esq.
Ray, Quinney & Nebeker
Salt Lake City, Utah

For Respondent Kimberly Securities, Inc.:

Kimberly J. Carrella
Kimberly Securities, Inc.
Huntington, New York

For Respondent Kimberly Jean Misaraca:

Kimberly Jean Misaraca
In Propria Persona
Huntington, New York

For Respondent Noel J. Belmonte:

Noel J. Belmonte
In Propria Persona
Huntington, New York

CASE INFORMATION

Statement of Claim filed: August 8, 2002

Claimant's Uniform Submission Agreement signed: May 3, 2002

Joint Statement of Answer filed by Respondents Kimberly Securities, Inc., Kimberly Jean Misaraca, and Noel J. Belmonte: September 27, 2002

Respondent Kimberly Securities, Inc.'s Uniform Submission Agreement signed: Not signed

Respondent Kimberly Jean Misaraca's Uniform Submission Agreement signed: Not signed

Respondent Noel J. Belmonte's Uniform Submission Agreement signed: Not signed

CASE SUMMARY

Claimant alleged churning, unauthorized trading, unsuitability, breach of fiduciary duty, failure to supervise, violation of Federal Securities Laws, violation of the Utah Uniform Securities Act, and violation of NASD rules. The dispute involved transactions, in various securities, in Claimant's brokerage and IRA accounts held with Respondent Kimberly Securities, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested \$458,444.00 in compensatory damages, \$1,000,000.00 in punitive damages, lost opportunity costs, interest, attorney's fees, forum fees and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, forum fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents, Kimberly Securities, Inc., Kimberly Jean Misaraca, and Noel J. Belmonte, did not file with the NASD Dispute Resolution, properly executed submission agreements; however, all said Respondents are required to submit to Arbitration and Respondents Kimberly Securities, Inc., Kimberly Jean Misaraca, and Noel J. Belmonte, having answered the claim, 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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca are jointly and severally liable to and shall pay Claimant the sum of \$382,281.00 in compensatory damages.
- 2) Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca are jointly and severally liable to and shall pay Claimant pre-judgment interest in the amount of \$61,219.00, pursuant to Utah Code Annotated §61-1-22(1)(b).
- 3) Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca are jointly and severally liable to and shall pay Claimant the sum of \$887,000.00 in treble damages (based on total of compensatory damages and pre-judgment interest), pursuant to Utah Code Annotated §61-1-22(2).
- 4) Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca are jointly and severally liable to and shall pay Claimant the sum of \$127,427.00 in attorney's fees, pursuant to Utah Code Annotated §61-1-22(1)(a).
- 5) Respondents Kimberly Securities, Inc., Kimberly Jean Misaraca and Noel J. Belmonte are jointly and severally liable and shall pay Claimant the sum of \$32,181.00 in compensatory damages.
- 6) Respondents Kimberly Securities, Inc., Kimberly Jean Misaraca and Noel J. Belmonte are jointly and severally liable to and shall pay Claimant pre-judgment interest in the amount of \$5,402.00, pursuant to Utah Code Annotated §61-1-22(1)(b).
- 7) Respondents Kimberly Securities, Inc., Kimberly Jean Misaraca and Noel J. Belmonte are jointly and severally liable to and shall pay Claimant the sum of \$10,727.00 in attorney's fees, pursuant to Utah Code Annotated §61-1-22(1)(a).
- 8) Except as noted above, the parties shall bear their respective costs.
- 9) All other relief requested and not expressly granted is denied.
- 10) This Award shall bear post-judgment interest at the rate of 3.41% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 3.41% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.

FEEs

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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 that 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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

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 Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: February 3, 2003	1 session
Three (3) Hearing sessions @ \$1,200/session	= \$ 3,600.00
Hearings: June 10, 2003	1 session
June 12, 2003	2 sessions

Total Forum Fees	= \$ 4,800.00
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The Panel assessed \$4,800.00 of the forum fees jointly and severally to Respondents Kimberly Securities, Inc. and Kimberly Jean Misaraca.

Fee Summary

1. Claimant, Robert L. Allphin, is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	= \$ (1,700.00)
Refund Due Claimant Robert L. Allphin	= \$ (1,200.00)

2. Respondents, Kimberly Securities, Inc. and Kimberly Jean Misaraca, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,800.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 4,800.00

3. Respondent Kimberly Securities, Inc. is charged with the following fees and costs:

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

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

ARBITRATION PANEL

<i>Raymond L. Betts, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Hardin A. Whitney, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George John Potter</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

RAYMOND L. BETTS, ESQ.
Chair, Public Arbitrator

Signature Date


HARDIN A. WHITNEY, ESQ.
Public Arbitrator

July 17, 2003
Signature Date

GEORGE JOHN POTTER
Non-Public Arbitrator

Signature Date

7/17/03
Date of Service

ARBITRATION PANEL

<i>Raymond L. Betts, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Hardin A. Whitney, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George John Potter</i>	-	<i>Non-Public Arbitrator</i>

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RAYMOND L. BETTS, ESQ.
Chair, Public Arbitrator

Signature Date

HARDIN A. WHITNEY, ESQ.
Public Arbitrator

Signature Date


GEORGE JOHN POTTER
Non-Public Arbitrator

7 / 14 / 2003
Signature Date

7/17/03
Date of Service