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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-05940

Dr. Harold H. Kalman Trustee FBO Harold Kalman  
Harold Kalman IRA  
Pearl Z. Kalman Trustee FBO Pearl Kalman

Names of the Respondents

Hearing Site: Boca Raton, Florida

Quick & Reilly  
Thomas Barnwell

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

**REPRESENTATION OF PARTIES**

For Dr. Harold H. Kalman Trustee FBO Harold Kalman, Harold Kalman IRA and Pearl Z. Kalman Trustee FBO Pearl Kalman, hereinafter collectively referred to as "Claimants": Adam Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, Florida..

For Quick & Reilly ("Q&R") and Thomas Barnwell ("Barnwell"), hereinafter collectively referred to as "Respondents": Marc. S. Dobin, Esq. and Debra A. Jenks, Esq., Dobin & Jenks, LLP, Jupiter, Florida and Matthew S. Diggins, Esq. Quick & Reilly, Inc., New York, New York.

**CASE INFORMATION**

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

Claimants signed the Uniform Submission Agreement: October 1, 2002.

Statement of Answer filed by Respondents on or about: January 13, 2003.

Respondent Q&R signed the Uniform Submission Agreement. January 13, 2003.

Respondent Barnwell did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) unsuitability; 2) fraudulent or otherwise negligent conduct; 3) violation of Fla. Stat. 517; 4) breach of fiduciary duty; 5) failure to supervise; 6) violation of Section 10(b)(5) of the Securities Exchange Act of 1934; and, 7) misrepresentation. The causes of action relate to the sale of U.S. Treasury Bonds and various retirement funds and subsequent purchase of mutual funds in Claimants' accounts, including, but not limited to, Galaxy Funds, Dreyfus Premier Limited Term and Federated Fixed Income Securities.

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 in the amount of \$260,000.00, commissions and fees, rescission, interest, costs, expenses, disbursements, reasonable attorney's fees, expert witness fees and for such other relief as the Panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Barnwell did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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) Respondents are found jointly and severally liable for violation of Fla. Stat. 517; unsuitability; negligence; breach of fiduciary duty; and, failure to supervise and shall pay to Claimants compensatory damages in the amount of \$132,000.00;
- 2) Respondents are found jointly and severally liable and shall pay to Claimants attorney's fees, pursuant to Fla. Stat. 517, in the amount of \$25,000.00; plus,
- 3) Respondents are found jointly and severally liable and shall reimburse Claimants their NASD filing fee in the amount of \$300.00.

Any and all claims for relief not specifically addressed herein, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$300.00

**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, Q&R is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: April 22, 2003 1 session	
Three (3) Hearing sessions with the Panel @ \$1,125.00	= \$3,375.00
Hearing Dates: October 7, 2003 2 sessions	
October 8, 2003 1 session	
Total Forum Fees	= \$4,500.00

The Panel has assessed the total forum fees of \$4,500.00 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:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Q&R is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00

<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Q&R and Barnwell are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,500.00
Total Fees	= \$4,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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

**ARBITRATION PANEL**

<i>Harvey Alan Blicksilver, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Nelson J. Brous</i>	-	<i>Public Arbitrator</i>
<i>Nicholas A. Natale</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Harvey Alan Blicksilver, Esq.  
Public Arbitrator, Presiding Chairperson

10/13/03  
Signature Date

/s/  
Nelson J. Brous  
Public Arbitrator

10/15/03  
Signature Date

/s/  
Nicholas A. Natale  
Non-Public Arbitrator

10/14/03  
Signature Date

10/20/03  
Date of Service (For NASD Dispute Resolution office use only)

OCT 13 2003 10:35AM NASD

NASD Dispute Resolution  
Arbitration No.02-05940  
Award Page 4

<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Harvey Alan Blicksilver, Esq.  
Nelson J. Brous  
Nicholas A. Natale

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

OCT. 13, 2003  
Signature Date

Nelson J. Brous  
Public Arbitrator

Signature Date

Nicholas A. Natale  
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Signature Date

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NASD Dispute Resolution

Arbitration No.02-05940

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<u>Less payments</u>	= \$ 5,200.00
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Nelson J. Brous

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Non-Public Arbitrator

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