

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

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*In the Matter of the Arbitration Between:*

Rosemarie D. Schenck (Claimant) v. Kirlin Securities, Inc., First Union Securities, Inc. (n/k/a Wachovia Securities, Inc.), Gruntal & Co., L.L.C. and Stephen J. Cohen (Respondents)

Case Number: 02-06105

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Members, Terminated Member, and Associated Person

**REPRESENTATION OF PARTIES**

Claimant, Rosemarie D. Schenck ("Schenck"), hereinafter referred to as "Claimant":  
Richard Lingg, Esq., New York, NY.

Respondent Kirlin Securities, Inc. ("Kirlin"): Barry Bordetsky, Esq., and Isaac M. Zucker, Esq., Kirlin Securities, Inc., Syosset, NY.

Respondent First Union Securities, Inc., n/k/a Wachovia Securities, Inc. ("Wachovia"):  
Brian A. Carlis, Esq., Stark & Stark, P.C., Princeton, NJ.

Respondent Stephen J. Cohen ("Cohen") appeared *pro se*. Previously represented by:  
Brian A. Carlis, Esq., Stark & Stark, P.C., Princeton, NJ.

Respondent Gruntal & Co., L.L.C. ("Gruntal") did not make an appearance in this matter.

Kirlin, Wachovia, Cohen, and Gruntal are hereinafter collectively referred to as  
"Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: October 10, 2002.

Claimant Schenck signed the Uniform Submission Agreement: October 10, 2002.

Statement of Answer filed by Respondent Kirlin on or about: December 9, 2002.

Respondent Kirlin signed the Uniform Submission Agreement: December 9, 2002.

Joint Statement of Answer filed by Respondents Wachovia and Cohen on or about:  
December 31, 2002.

Respondent Wachovia signed the Uniform Submission Agreement: October 18, 2002.

Respondent Cohen signed the Uniform Submission Agreement: November 27, 2002.

### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence, suitability, failure to supervise, unauthorized trading, breach of fiduciary duty, breach of contract, and churning. The causes of action relate to Phillip Morris LEAPS, Kirlin Holding Company, and various other speculative securities.

Unless specifically admitted in its Answer, Respondent Kirlin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$452,000.00; interest; and such other and further relief that the arbitrators deem appropriate.

Respondent Kirlin requested dismissal of the Statement of Claim in its entirety; an award of costs against Claimant; and such further relief as is just and proper.

Respondents Wachovia and Cohen requested dismissal of the Statement of Claim in its entirety; costs and expenses including reasonable attorneys' fees; such further relief as is just and proper; and an Order that the matter be expunged from the CRD record of Respondent Cohen.

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

On or about October 29, 2002, Gruntal filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Therefore, all claims against Gruntal are stayed.

On or about February 20, 2004, NASD Dispute Resolution ("NASD DR") was notified that Claimant and Respondent Wachovia had settled this matter. Claimant therefore dismissed all claims against Respondent Wachovia.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the

issues submitted for determination as follows:

1. Respondents Kirlin and Cohen are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$46,640.00 plus interest at the rate of 5% per annum accruing from February 27, 1998 until July 13, 2004.
2. Any and all relief not specifically addressed herein is denied.

### **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	= \$ 300.00
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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. Accordingly, Kirlin Securities, Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member fees	= \$ 5,200.00

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, First Union Securities, Inc., n/k/a Wachovia Securities, Inc., is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member fees	= \$ 5,200.00

#### **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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	September 17, 2003	1 session
	October 3, 2003	1 session
	October 31, 2003	1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-hearing conferences: May 8, 2003 1 session  
January 22, 2004 1 session

Thirteen (13) Hearing sessions @ \$1,125.00/session = \$14,625.00  
Hearing Dates: January 21, 2004 1 session  
February 23, 2004 1 session  
February 24, 2004 2 sessions  
February 25, 2004 2 sessions  
February 26, 2004 2 sessions  
March 1, 2004 2 sessions  
July 12, 2004 2 sessions  
July 13, 2004 1 session

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Total Forum Fees = \$18,225.00

1. The Panel has assessed \$18,225.00 of the forum fees jointly and severally against Respondents Kirlin and Cohen.

**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.

1. Claimant, copies of audio tapes = \$ 210.00  
2. Respondent Kirlin, copies of audio tapes = \$ 30.00

**Fee Summary**

1. Claimant is solely liable for:
- |                             |               |
|-----------------------------|---------------|
| Initial Filing Fee          | = \$ 300.00   |
| <u>Administrative Costs</u> | = \$ 210.00   |
| Total Fees                  | = \$ 510.00   |
| <u>Less payments</u>        | = \$ 1,425.00 |
| Refund Due Claimant         | = \$ 915.00   |

2. Respondent Wachovia 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     |

3. Respondent Kirlin is solely liable for:

Member Fees	= \$ 5,200.00
<u>Administrative Costs</u>	= \$ 30.00
Total Fees	= \$ 5,230.00
<u>Less payments</u>	= \$ 5,230.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Kirlin and Cohen are jointly and severally liable for:

<u>Forum Fees</u>	= \$18,225.00
Total Fees	= \$18,225.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$18,225.00


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

Robert D. Herschman, Esq.	-	Public Arbitrator, Presiding Chair
Edward Baer, Esq.	-	Public Arbitrator
James J. Noone	-	Non-Public 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 in which is my award.

  
Robert D. Herschman, Esq.  
Public Presiding Chairperson

8/13/04  
Signature Date

\_\_\_\_\_  
Edward Baer, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
James J. Noone  
Non-Public Arbitrator

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

August 16, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Edward Baer, Esq.	-	Public Arbitrator
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\_\_\_\_\_  
Robert D. Herschman, Esq.  
Public Presiding Chairperson

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

\_\_\_\_\_  
*Edward Baer*  
Edward Baer, Esq.  
Public Arbitrator

\_\_\_\_\_  
*8/16/04*  
Signature Date

\_\_\_\_\_  
James J. Noone  
Non-Public Arbitrator

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

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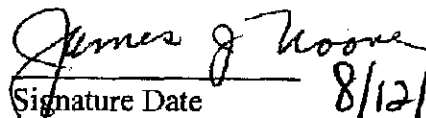
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Robert D. Herschman, Esq.  
Public Presiding Chairperson

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Signature Date

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Edward Baer, Esq.  
Public Arbitrator

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Signature Date

\_\_\_\_\_  
James J. Noone  
Non-Public Arbitrator

  
\_\_\_\_\_  
Signature Date 8/12/04

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