

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-06357

Christopher Brown

Names of the Respondents

Hearing Site: Charlotte, North Carolina

Kirlin Securities, Inc.

David Ryan

John Padgett

Theodore Dragon

Karl F. Hemmer

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

REPRESENTATION OF PARTIES

Claimant, Christopher Brown, hereinafter referred to as "Claimant", was represented by Fred B. Monroe, Esq., James, McElroy & Diehl, P.A., Charlotte, North Carolina.

Respondents, Kirlin Securities, Inc. ("Kirlin"), John Padgett ("Padgett"), Theodore Dragon ("Dragon"), and Karl F. Hemmer ("Hemmer"), were represented by Isaac M. Zucker, Esq. and Barry M. Bordetskey, Esq., Kirlin Securities, Inc., Syosset, New York.

Respondent, David Ryan ("Ryan"), was represented by Steven M. Kaplan, Rosenfeld & Kaplan, L.L.P., New York, New York.

CASE INFORMATION

Statement of Claim filed on October 21, 2002.

Amended Statement of Claim filed on October 14, 2004.

Claimant signed the Uniform Submission Agreement on October 18, 2002.

Statement of Answer filed by Respondents on January 3, 2003.

Respondents Kirlin, Padgett, Dragon and Hemmer filed a Statement of Answer to the Amended Statement of Claim on December 21, 2004.

Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution.

Claimant's Motion to Amend Statement of Claim was filed on October 14, 2004.

Respondents Kirlin, Padgett, Dragon and Hemmer Response to Claimant's Motion to Amend Statement of Claim was filed on October 29, 2004.

Respondents Kirlin, Padgett, Dragon and Hemmer filed a Motion to Dismiss on December 21, 2004.

Claimant filed his Memorandum of Law in Opposition to Respondents' Motion to Dismiss on December 29, 2004.

Respondents Kirlin, Padgett, Dragon and Hemmer filed a Reply to Claimant's Opposition to their Motion to Dismiss on January 3, 2005.

Claimant's Supplemental Reply to Respondents' Motion to Dismiss was filed on January 4, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: violation of federal and North Carolina securities laws, fraud, breach of fiduciary duty, conversion, breach of contract, churning, negligent misrepresentations and omissions, *respondeat superior*, unauthorized transactions, conspiracy, sale of unregistered securities, and negligent supervision. The causes of action relate to the purchase and sale of Hollywood Casino stock, Capitol Communities Corporation stock, Capitol Communities Corp. stock, Concentrax, Inc. stock, Eline Entertainment Group, Inc. stock, and Mega Pro Tools, Inc. stock.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, assumption of risk, estoppel, unclean hands, ratification, waiver, Respondents acted in good faith and with reasonable care, any losses suffered were the result of market conditions, statute of limitations, laches, and claims barred because NASD lacks jurisdiction over necessary and indispensable parties.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in the amount of \$1,000,000.00, interest, treble damages, attorneys' fees, and costs.

Respondents in their Statements of Answer requested that all causes of action be dismissed prior to the hearing, and that judgment be entered against Claimant on all causes of action.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by and on behalf of the Claimant, the undersigned Panel determined that Respondents Ryan and Hemmer have been 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 did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Prior to the hearing, the Panel granted Claimant's Motion to Amend the Statement of Claim.

Prior to the hearing, the Panel denied Respondents Kirlin, Padgett, Dragon and Hemmer's Motion to Dismiss.

During the hearing, Claimant dismissed Respondent Dragon.

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, Ryan, and Hemmer are jointly and severally liable to and shall pay to Claimant compensatory damages of \$200,000.00;
2. All claims against Respondent Padgett are denied;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including treble damages, is denied in its entirety.

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
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Kirlin is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 8-10, 2004 adjournment by parties = \$ 1,200.00

1. The Panel has assessed \$600.00 of the adjournment fees to Claimant.
2. The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Respondents Kirlin, Ryan, and Hemmer.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: June 18, 2003 1 session

Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00

Hearing Dates: January 10, 2005 3 sessions

January 11, 2005 3 sessions

January 12, 2005 3 sessions

January 13, 2005 2 sessions

Total Forum Fees = \$14,400.00

1. The Panel has assessed \$14,400.00 of the forum fees jointly and severally to Respondents Kirlin, Ryan, and Hemmer.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 500.00

Adjournment Fee = \$ 600.00

Total Fees = \$ 1,100.00

Less payments = \$ 2,150.00

Less previous refund = \$ 450.00

Refund Owed to Claimant = \$ 600.00

2. Respondent Kirlin is assessed and shall pay the following fees:

Member Fees = \$ 8,550.00

Total Fees = \$ 8,550.00

Less payments = \$ 8,550.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents Kirlin, Ryan, and Hemmer are jointly and severally assessed and shall pay the following fees:

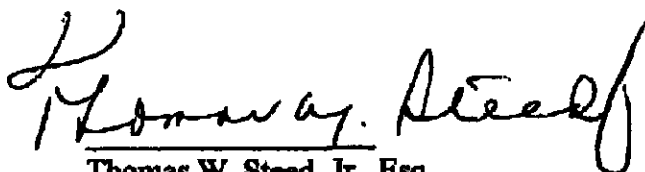
Adjournment Fee	= \$ 600.00
Forum Fees	= \$14,400.00
Total Fees	= \$15,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$15,000.00

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

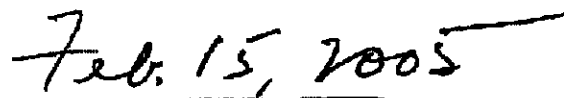
ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Dennis W. Good	-	Public Arbitrator, Panelist
Robert Shiffra, Esq.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Thomas W. Steed, Jr., Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Dennis W. Good
Public Arbitrator, Panelist

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date



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

Concurring Arbitrators' Signatures

Thomas W. Steed, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Dennis W. Good
Dennis W. Good
Public Arbitrator, Panelist

2-17-05
Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date

February 18 2005
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Thomas W. Steed, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Dennis W. Good
Public Arbitrator, Panelist

Signature Date



Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

2-17-05

Signature Date

February 18, 2005
Date of Service (For NASD Dispute Resolution office use only)