

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

---

In the Matter of the Arbitration Between:

Patricia Toner a/k/a Eleanor Patricia Toner and Patricia Toner Cash/Personal (Claimants)  
v. Kirlin Securities, Frank Nargentino, and Ed Deicke (Respondents)

Case Number: 02-06921

Hearing Site: New York, New York

---

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

**REPRESENTATION OF PARTIES**

Claimants Patricia Toner a/k/a Eleanor Patricia Toner ("Toner") and Patricia Toner Cash/Personal ("Toner Cash/Personal") hereinafter collectively referred to as "Claimants": Douglas S. Knehr, Esq., Douglas S. Knehr, L.L.C., Lawrenceville, NJ.

Respondents Kirlin Securities, Inc. ("Kirlin") and Frank Nargentino ("Nargentino"): Martin P. Russo, Esq., Kurzman Eisenberg Cobin Lever & Goodman, White Plains, NY. Previously represented by: Isaac M. Zucker, Esq. and Barry Bordetsky, Esq., Kirlin Securities, Inc., Syosset, NY.

Respondent Ed Deicke ("Deicke") did not make an appearance in this matter.

Kirlin, Nargentino, and Deicke are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: November 15, 2002.

Claimants' Response to Respondents Kirlin's and Nargentino's Motion to Dismiss filed on or about: January 28, 2003.

Toner signed the Uniform Submission Agreement: November 12, 2002.

Statement of Answer and Motion to Dismiss filed by Kirlin and Nargentino on or about: January 15, 2003.

Kirlin signed the Uniform Submission Agreement: February 27, 2003.

Nargentino signed the Uniform Submission Agreement: February 27, 2003.

Deicke did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Federal securities laws; violation of Exchange rules; churning; unsuitability; violation of State laws; common law

fraud; negligent misrepresentations and omissions; breach of fiduciary duty; breach of contract; and failure to supervise. Claimants' claim involved mutual funds; Freddie Mac bonds; unit investment trusts; Brady bonds; mortgage-backed securities; and cash and money market funds.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$235,107.68, plus punitive/exemplary damages in the amount of \$705,323.04; litigation expenses; filing fees; panel and counsel fees; costs; interest; reasonable attorneys' fees; and such other and further relief as the Panel deems to be equitable and just.

Respondents Kirlin and Nargentino requested that a judgment be entered against Claimant.

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

Respondent Deicke did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On or about April 14, 2003 Claimant withdrew all of its claims against Respondent Deicke.

As stated at the hearing, the parties will split the costs of the February 4, 2004 appearance of expert witness Gerald A. Guild. Mr. Guild testified for one hour (12:10 p.m. – 1: 10 p.m.).

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, and 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 Kirlin and Nargentino are jointly and severally liable for and shall pay to Claimant Patricia Toner compensatory damages in the amount of \$14,800.00
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$375.00
--------------------------	------------

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Kirlin Securities, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: May 20, 2003 1 session	

Seven (7) Hearing sessions @ \$1,200.00	= \$8,400.00
Hearing Dates: January 29, 2004 2 sessions	
January 30, 2004 2 sessions	
February 4, 2004 3 sessions	

---

Total Forum Fees	= \$9,600.00
------------------	--------------

1. The Panel has assessed \$2,880.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$6,720.00 of the forum fees jointly and severally against Respondents Kirlin and Nargentino.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$2,880.00</u>
Total Fees	= \$3,255.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution	= \$1,455.00
  
2. Kirlin is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
  
3. Kirlin and Nargentino are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$6,720.00</u>
Total Fees	= \$6,720.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$6,720.00

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

**ARBITRATION PANEL**

Carolyn J. Mastropieri	-	Public Arbitrator, Presiding Chair
Deborah Sherman, Esq.	-	Public Arbitrator
John J. Witkowski, Jr., Esq.	-	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, which is my award.

\_\_\_\_\_  
Carolyn J. Mastropieri  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Deborah Sherman, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Non-Public Arbitrator

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

March 4, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Carolyn J. Mastropieri	-	Public Arbitrator, Presiding Chair
Deborah Sherman, Esq.	-	Public Arbitrator
John J. Witkowski, Jr., Esq.	-	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, which is my award.



Carolyn J. Mastropieri  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Deborah Sherman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Non-Public Arbitrator

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

March 4, 2004  
Date of Service (For NASD Dispute Resolution use only)