

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

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In the Matter of the Arbitration Between:

Jeanne I. Kappel and Jeanne I. Kappel IRA (Claimant) v. Commonwealth Financial Network and John DelVecchio (Respondents)

Case Number: 02-07029

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Jeanne I. Kappel ("Kappel") and Jeanne I. Kappel IRA ("Kappel IRA") hereinafter collectively referred to as "Claimants": Brian A. Carlis, Esq., Stark & Stark, P.C., Princeton, NJ.

Respondents Commonwealth Financial Network ("Commonwealth") and John DelVecchio ("DelVecchio") hereinafter collectively referred to as "Respondents": Anthony Paduano, Esq. and Katherine B. Harrison, Esq., Paduano & Weintraub, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 18, 2002.

Claimant Kappel signed the Uniform Submission Agreement: November 7, 2002.

Joint Statement of Answer filed by Respondents on or about: February 14, 2003.

Respondent Commonwealth signed the Uniform Submission Agreement: December 26, 2002.

Respondent DelVecchio signed the Uniform Submission Agreement: February 12, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentation, unsuitability, negligence, sale of unregistered securities, violation of state and federal securities laws, violation of NASD Conduct Rules, failure to supervise, breach of contract, breach of fiduciary duty, fraud, and common law fraud. The causes of action relate to IBF Special Purpose Corporation VII Notes

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$325,000.00; pre-judgment interest; post-judgment interest; expenses, including filing and forum fees, other expenses and

reasonable attorneys' fees; and punitive damages.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; an award of reasonable costs, including attorneys' fees; expungement of all reference to this matter from Respondent DelVecchio's CRD; and such other and further relief as the Panel deems just and proper.

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

On or about August 4, 2004, NASD Dispute Resolution was notified that the parties settled this matter and that the parties requested an order from the Panel expunging all references to this case from Respondent DelVecchio's CRD record and submitted a Stipulation Regarding Expungement and a Proposed Order.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety with prejudice.
2. All parties are to bear their own costs and fees.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John DelVecchio's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent John DelVecchio must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. 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 = \$ 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. In this matter, the member firm Commonwealth Financial Network 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

**Adjournment Fees**

The following adjournment fees are assessed:

June 8-11, 2004, joint adjournment request	= Waived
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**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: July 25, 2003 1 session</u>	<u></u>
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$3,050.00</u>
Refund Due Claimants	= \$2,187.50

2. Respondent Commonwealth is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
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NASD Dispute Resolution

Arbitration No. 02-07029

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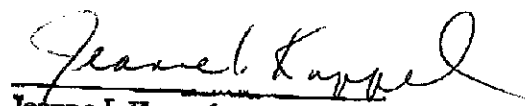
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

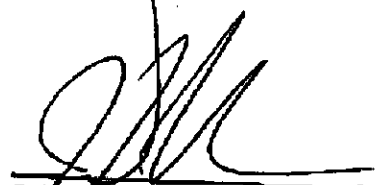
All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
Jeanne L. Kappel  
Jeanne L. Kappel IRA  
Claimants

10-04-04  
Signature Date

Commonwealth Financial Network  
Respondent


  
John DeVecchio  
Respondent

                      
Signature Date

9/22/04  
Signature Date

Parties' Signatures

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Jeanne I. Kappel  
Jeanne I. Kappel IRA  
Claimants

  
\_\_\_\_\_  
Commonwealth Financial Network  
Respondent By: Joe Tully

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

9/21/2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John DeVecchio  
Respondent

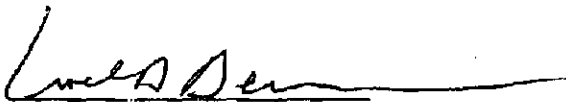
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Signature Date

**ARBITRATION PANEL**

Noel B. Berman, Esq.	-	Public Arbitrator, Presiding Chair
George W. Fehling	-	Public Arbitrator
Eric J. Sussman, 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 is which is my award.



Noel B. Berman, Esq.  
Public Arbitrator, Presiding Chair

11/18/04  
Signature Date

\_\_\_\_\_  
George W. Fehling  
Public Arbitrator

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

\_\_\_\_\_  
Eric J. Sussman, Esq.  
Non-Public Arbitrator

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Signature Date

January 5, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

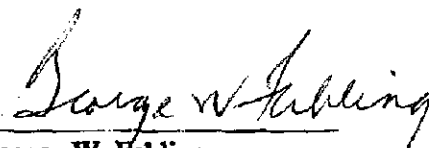
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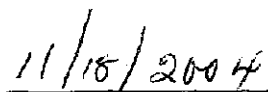
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Public Arbitrator, Presiding Chair

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Signature Date

  
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George W. Fehling  
Public Arbitrator

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

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Eric J. Sussman, Esq.  
Non-Public Arbitrator

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Signature Date

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Noel B. Berman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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George W. Fehling  
Public Arbitrator

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Signature Date

  
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Eric J. Sussman, Esq.  
Non-Public Arbitrator

  
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Signature Date

January 5, 2005

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Date of Service (For NASD office use only)