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

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In the Matter of the Arbitration Between:

Name of the Claimant

Shula Gilad, Elana Gilad, and Estee Gilad,  
as Trustees of the Gilad Revocable Trust

Case Number: 02-07564

Names of the Respondents

Sanford C. Bernstein & Co., L.L.C.  
Bernstein Investment Research and Management,  
a unit of Alliance Capital Management, L.P.  
Barry Berg

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Shula Gilad, Elana Gilad, and Estee Gilad, as Trustees of the Gilad Revocable Trust, hereinafter referred to as "Claimant": Russell L. Forkey, Esq., Russell L. Forkey, P.A., Boca Raton, Florida.

For Sanford C. Bernstein & Co., L.L.C. ("Bernstein"), Bernstein Investment Research and Management, a unit of Alliance Capital Management, L.P. ("BIRM"), and Barry Berg ("Berg"), hereinafter collectively referred to as "Respondents": Matthew J. Brief, Esq., Brief, Justice, Carmen, Kesselman, and Kleiman, L.L.P., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: December 13, 2002.

Claimant signed the Uniform Submission Agreement: December 13, 2002.

Respondent Berg signed the Uniform Submission Agreement: January 15, 2003.

Respondent Sanford signed the Uniform Submission Agreement: January 16, 2003.

Respondent BIRM signed the Uniform Submission Agreement: January 16, 2003.

Statement of Answer and Counterclaim filed by Respondents on or about: February 13, 2003.

Answer and Affirmative Defenses to Counterclaim filed by Claimant on or about: March 20, 2003.

Amended Answer and Affirmative Defenses to Counterclaim filed by Claimant on or about: May 27, 2003.

Motion to Preclude Reply to Counterclaim filed by Respondents on or about: March 25, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud and deceit, negligence, breach of fiduciary duties, breach of contract, negligent supervision, and violations of Florida Statutes Chapter 517. The causes of action relate to the financial management of a revocable trust, and

the purchase and sale of shares of stock in various companies including Caterpillar, Incorporated, Chevron Corporation, and Citigroup, Incorporated, in Claimant's accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, asserted various affirmative defenses and filed a Counterclaim against Claimant.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$85,000.00, punitive damages in the amount of \$10,000.00, plus interest, costs, attorneys' fees, dismissal of the Counterclaim, and such other relief as the undersigned arbitrators (the "Panel") deemed appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety, an award of Respondents' costs in defending the proceeding, and the entry of an award recommending expungement of the above-referenced arbitration from Respondent Berg's NASD Central Registration Depository ("CRD"), or allowing such expungement to proceed in accordance with applicable law, rules, and regulations of the NASD. Respondents requested damages in their Counterclaim of \$25,000.00 for harm to Respondent Berg's professional reputation, contribution and indemnification of any amounts awarded in favor of the Claimant and against Respondents, and such other and further relief as the Panel may deem just and proper.

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

The parties in this matter have agreed that the Award may be entered in counterpart copies or that a signed, handwritten Award may be entered.

On or about July 29, 2003, the Panel issued an order denying Respondents' Motion to Preclude Reply to Counterclaim.

On or about July 29, 2003, the Panel issued an order granting Claimants' Motion to Dismiss Respondents' Counterclaim.

On or about March 22, 2004, the parties notified NASD Dispute Resolution that Claimant withdrew its objection to Respondents' Pre-hearing Brief and that Respondents, in turn, agreed that their Motion to Preclude Reply to Counterclaim was moot.

### **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:

Claimant's claims for relief, including claims under Florida Statutes Chapter 517, punitive damages, and attorneys' fees, are denied, in their entirety.

Respondents' claims for relief are dismissed, with prejudice.

Respondents' request for expungement is denied.

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	= \$ 225.00
Counterclaim filing fee	= \$ 1,000.00

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

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 4,600.00

#### **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 the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: July 29, 2003	1 session

Twelve (12) Hearing sessions with the Panel @ \$1,125.00	= \$13,500.00
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Hearing sessions:	March 30, 2004	2 sessions
	March 31, 2004	2 sessions
	April 1, 2004	1 session
	June 7, 2004	2 sessions
	June 8, 2004	2 sessions

	June 9, 2004	2 sessions	
	June 10, 2004	1 session	
Total Forum Fees			= \$14,625.00

The Panel has assessed the total forum fees in the amount of \$14,625.00 to Claimant.

**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**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$14,625.00
Total Fees	= \$14,850.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$13,875.00

Respondent Bernstein is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Bernstein, BIRM, and Berg are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 1,000.00
Total Fees	= \$ 1,000.00
<u>Less Payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

George W. Rodormer	-	Public Arbitrator, Presiding Chairperson
Judy Avey	-	Public Arbitrator
Brian E. Slotky	-	Non-Public Arbitrator

NASD Dispute Resolution

Arbitration No. 02-07564

Award Page 5 of 5

**Concurring Arbitrators' Signatures**

/s/  
George W. Rodormer  
Public Arbitrator, Presiding Chairperson

June 17, 2004  
Signature Date

/s/  
Judy Avey  
Public Arbitrator


June 17, 2004  
Signature Date

/s/  
Brian E. Slotky  
Non-Public Arbitrator

June 17, 2004  
Signature Date

June 17, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

  
George W. Rodormer  
Public Arbitrator, Presiding Chairperson

6/17/04  
Signature Date

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Judy Avey  
Public Arbitrator

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Signature Date

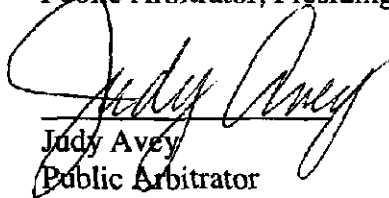
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Brian E. Slotky  
Non-Public Arbitrator

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Signature Date

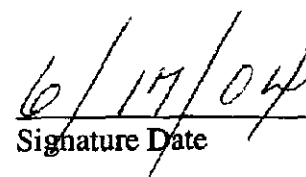
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