

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Elena V. Kohn

Case Number: 03-03656

Names of the Respondents

Intersecurities, Inc.

Michael Newman

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

For Elena V. Kohn, hereinafter referred to as "Claimant": Charles S. Wuest, Esq. and Debra Brewer Hayes, Esq., Woskas & Hayes, LLP, Kingwood, Texas.

For Intersecurities, Inc. ("Intersecurities") and Michael Newman ("Newman"), hereinafter collectively referred to as "Respondents": Peter B. King, Esq. and Lindsey R. Trowell, Esq., Fowler White Boggs Banker P.A., Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 16, 2003.

Claimant's Motion to Assess Certain Costs and for Other Relief filed on or about: February 9, 2004.

Claimant signed the Uniform Submission Agreement: February 20, 2003.

Statement of Answer filed by Respondents on or about: August 22, 2003.

Respondent Intersecurities signed the Uniform Submission Agreement: June 10, 2003.

Respondent Newman signed, but did not date, the Uniform Submission Agreement.

Closing Brief of Claimant filed on or about: April 19, 2004.

Respondents' Post-Arbitration Brief filed on or about: April 20, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Alabama Code 1975 Section 8-6-19; breach of fiduciary duty; unsuitability; failure to supervise; and, negligence. The causes of action relate to Claimant's investments in the following funds: Great Companies America C; Janus Capital Appreciation C; Janus Growth C; Janus Global C; and, Alger Aggressive Growth C.

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

**RELIEF REQUESTED**

Claimant requested reimbursement of all of the account losses of \$101,914.00; all charges to the

account; the lost earnings on the account; pre-judgment interest at the maximum statutory rate; the costs of these proceedings, including a reasonable attorneys' fee; punitive damages; and, that Claimant be granted all other and further relief to which she may be entitled.

Respondents requested that this matter be dismissed and that all claims against them be denied. Respondents further requested that they be awarded their costs and attorneys' fees incurred in defending this matter, that the Panel tax against Claimant all costs of this proceeding, including hearing session and related fees, that the Panel authorize the expungement of this matter from Respondents' records of the Central Registration Depository ("CRD") and such further relief as the Panel deemed just.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Claimant's Motion to Assess Certain Costs and for Other Relief is denied.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondents' request for an expungement of their CRD records, 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	= \$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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, Intersecurities, is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 10, 11 and 12, 2004 Hearing Dates, adjournment by Respondents = \$1,125.00, assessed to Respondents, jointly and severally.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

### **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:

Four Pre-hearing sessions with a single arbitrator @ \$450.00 = \$1,800.00

Pre-hearing conferences:	December 19, 2003	1 session
	December 26, 2003	1 session
	January 5, 2004	1 session
	January 16, 2004	1 session

Three Pre-hearing sessions with the Panel @ \$1,125.00 = \$3,375.00

Pre-hearing conferences:	November 19, 2003	1 session
	February 7, 2004	1 session
	February 9, 2004	1 session

Seven Hearing sessions @ \$1,125.00 = \$7,875.00

Hearing Dates:	April 5, 2004	2 sessions
	April 6, 2004	3 sessions
	April 7, 2004	2 sessions

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Total Forum Fees = \$13,050.00

The Panel has assessed \$6,525.00 of the forum fees to Claimant.

The Panel has assessed \$6,525.00 of the forum fees jointly and severally to Respondents.

### **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 are 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 in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$6,525.00

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Total Fees	= \$6,825.00
Less payments	= \$1,425.00

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Balance Due NASD Dispute Resolution	= \$5,400.00
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Respondent Intersecurities is solely liable for:

Member Fees	= \$5,200.00
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Total Fees	= \$5,200.00
Less payments	= \$5,200.00

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Balance Due NASD Dispute Resolution	= \$0.00
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Respondents are jointly and severally liable for:

Adjournment Fee	= \$1,125.00
Forum Fees	= \$6,525.00

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Total Fees	= \$7,650.00
Less payments	= \$1,125.00

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Balance Due NASD Dispute Resolution	= \$6,525.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

R. Wayne Thorpe, Esq.	-	Public Arbitrator, Presiding Chair
William E. Beringer, Esq.	-	Public Arbitrator
Thomas C. Moxley	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
R. Wayne Thorpe, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
William E. Beringer, Esq.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Thomas C. Moxley  
Non-Public Arbitrator

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

April 27, 2004  
Date of Service (For NASD Dispute Resolution office use only)

04/26/2004

04/24/2004

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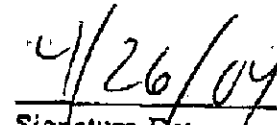
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Concurring Arbitrators' Signatures

  
R. Wayne Thorpe, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

  
William E. Beringer, Esq.  
Public Arbitrator

  
Signature Date

  
Thomas C. Moxley  
Non-Public Arbitrator

  
Signature Date

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R. Wayne Thorpe, Esq.  
Public Arbitrator, Presiding Chair

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

William E. Beringer  
William E. Beringer, Esq.  
Public Arbitrator

4-27-04  
Signature Date

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Thomas C. Moxley  
Non-Public Arbitrator

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

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NASD Dispute Resolution

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NO. 4339-AGEP 2/7/05

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Public Arbitrator, Presiding Chair

\_\_\_\_\_  
William E. Beringer, Esq.  
Public Arbitrator

  
Thomas C. Moxley  
Non-Public Arbitrator

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