

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Joni L. Guy

v.

03-03711

Oklahoma City, Oklahoma

Names of Respondents

Farmers Financial Solutions, LLC,  
James M. Kolich and Brian R. Meyer

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

**REPRESENTATION OF PARTIES**

Joni L. Guy ("**Claimant**") was represented by Rodney J. Heggy, Esq., Federman & Sherwood, Oklahoma City, Oklahoma.

Farmers Financial Solutions ("**Farmers Financial**") was represented by Harry A. Woods, Esq., Crowe & Dunlevy, Oklahoma City, Oklahoma.

James M. Kolich ("**Kolich**") and Brian R. Meyer ("**Meyer**") were represented by Michael C. Bigheart, Esq., Mitchell & DeClerck, P.L.L.C., Enid, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 21, 2003. The Submission Agreement of Claimant, Joni L. Guy, was signed on or about May 9, 2003. Claimant's Objection to the Motion for Summary Judgment by Respondent, Farmers Financial Solutions, LLC, was filed on or about April 26, 2004. Claimant's Objection to the Motion to Dismiss/Motion for Summary Judgment by Respondent, James M. Kolich, was filed on or about April 26, 2004. Claimant's Objection to the Motion to Dismiss/Motion for Summary Judgment by Respondent, Brian R. Meyer, was filed on or about April 26, 2004.

The Statement of Answer was filed by Respondent, Farmers Financial Solutions, LLC, on or about July 16, 2001. The Submission Agreement of Respondent, Farmers Financial Solutions, LLC, was signed on or about July 7, 2003. The Motion for Summary Judgment and Brief in Support was filed by Respondent, Farmers Financial Solutions, LLC, on or about April 14, 2004. The Reply Brief in

Support of its Motion was filed by Respondent, Farmers Financial Solutions, LLC on or about May 18, 2004.

The Statement of Answer was filed by Respondents, James M. Kolich and Brian R. Meyer, on or about August 24, 2003. The Submission Agreement of Respondent, Brian R. Meyer, was signed on or about July 9, 2003. The Submission Agreement of Respondent, James M. Kolich, was signed on or about July 10, 2003. The Motion to Dismiss/Motion for Summary Judgment and Brief in Support was filed by Respondent, James M. Kolich, on or about April 15, 2004. The Motion to Dismiss/Motion for Summary Judgment and Brief in Support was filed by Respondent, Brian R. Meyer, on or about April 15, 2004. The Reply to Claimant's Objection to the Motion for Summary Judgment was filed by Respondent, James M. Kolich, on or about May 18, 2004. The Reply to Claimant's Objection to the Motion to Dismiss/Motion for Summary Judgment was filed by Respondent, Brian R. Meyer, on or about May 18, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: NASD violation of the Rules of Fair Practice § 2110, breach of employment contract, promissory estoppel, libel and defamatory abuse. Claimant alleged that the Respondents incompetently managed her employment transition, which led to the destruction of her book of business.

Unless specifically admitted in their Answer, Respondents James M. Kolich and Brian R. Meyer denied the allegations made in the Statement of Claim and asserted the following defense: The Statement of Claim failed to state a claim which relief may be granted against Kolich and/or Meyer.

Unless specifically admitted in its Answer, Respondent Farmers Financial Solutions, LLC denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim failed to state a claim upon which relief may be granted; Claimant's conduct, including but limited to the following enumerated matters, estops her from any recovery against FFS: (a) an execution by her of an agreement with J. Kolich, Inc., which expressly recognizes that her contractual arrangement was with J. Kolich, Inc.; (b) an application by Claimant to become an independent representative and a registered representative of FFS; (c) an execution and forwarding by Claimant to FFS of a proposed agreement, and (d) timely knowledge by Claimant that her application was not accepted and that the proposed agreement was not executed by FFS. These factors established that Claimant knew that: (a) her proposed status as an independent contractor/registered representative with FFS was contingent upon FFS accepting her application and executing the proposed agreement; and (b) FFS did not accept her application or execute the proposed agreement; and, thus, Claimant is estopped from asserting that she was employed by FFS or that she was an independent contractor with it.

### **RELIEF REQUESTED**

Claimant, Joni L. Guy, requested an award of \$219,000.00 in compensatory damages, plus costs, attorney's fees and any other relief the panel deemed just and proper.

Respondents, James M. Kolich and Brian R. Meyer, requested that the panel enter a determination finding in their favor and be awarded their reasonable attorney's fees and costs.

Respondent, Farmers Financial Solutions, LLC, requested that the panel enter a determination finding in its favor and be awarded its reasonable attorney's fees and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

On June 3, 2004, the panel entered an order in regard to Farmers Financial's Motion for Summary Judgment, Kolich's Motion to Dismiss/Motion for Summary Judgment, and Brian R. Meyer's Motion to Dismiss/Motion for Summary Judgment which reflected the following:

"After reviewing the pleadings in the above-referenced matter, the Panel ruled as follows:

1. Farmers' Motion for Summary Judgment was granted with respect to the defamation claim, but denied with respect to the promissory estoppel claim;
2. James M. Kolich's Motion for Summary Judgment was granted with respect to the defamation claim, but denied with respect to the promissory estoppel claim; and
3. Brian R. Meyer's Motion for Summary Judgment was granted with respect to the defamation claim, and his Motion to Dismiss was granted with respect to the promissory estoppel claim."

Prior to the hearing on June 29, 2004, the Claimant dismissed Respondent, James M. Kolich as a party.

At the hearing, Farmers Financial Solutions, LLC, made a motion for a Third Party Claim against Respondent, James M. Kolich. The Panel denied the motion.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Claimant's claims, each and all, against Respondent, Farmers Financial Solutions, LLC, are dismissed with prejudice;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Farmers Financial Solutions, LLC.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>2,750.00</u>
Total Member Fees	\$	5,200.00

### Forum Fees and Assessments

The Arbitration 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. Fees associated with these proceedings are:

1 (One) Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
February 24, 2004	1 Session			
4 (Four) Hearing sessions	x	1,125.00	\$	4,500.00
June 29, 2004	2 Sessions			
June 30, 2004	2 Sessions			
Total Forum Fees			\$	<u>5,625.00</u>

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Joni L. Guy.

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Farmers Financial Solutions, LLC.

The Arbitration Panel has assessed \$375.00 of the forum fees to James M. Kolich.

### Fee Summary

Claimant, Joni L. Guy, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	<u>2,625.00</u>
Total Fees	= \$	2,925.00
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	1,500.00

Respondent, Farmers Financial Solutions, LLC, is liable for:

Member Fees		5,200.00
Forum Fees	= \$	<u>2,625.00</u>
Total Fees	= \$	7,825.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	2,625.00

Respondent, James M. Kolich, is liable for:

<u>Forum Fees</u>	= \$	<u>375.00</u>
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	<u>-0.00</u>

Balance Due NASD Dispute Resolution = \$ 375.00

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

**ARBITRATION PANEL**

Wallace W. Kunzman, Jr., Esq. - Public Arbitrator, Presiding Chair  
Danne L. Johnson - Public Arbitrator  
Thomas P. Hoover - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Wallace W. Kunzman, Jr., Esq.  
Wallace W. Kunzman, Jr., Esq.  
Public Arbitrator, Presiding Chair

09/16/04  
Signature Date

/s/ Danne L. Johnson  
Danne L. Johnson  
Public Arbitrator

09/19/04  
Signature Date

/s/ Thomas P. Hoover  
Thomas P. Hoover  
Non-Public Arbitrator

09/16/04  
Signature Date

09/17/04  
Date of service

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Balance Due NASD Dispute Resolution - \$ 375.00

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NASD Dispute Resolution  
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