

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

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In the Matter of the Arbitration Between:

Attilo and Marie Catani (Claimants) v. Thomas M. Mackenzie, Reynold Vaughan and Kirlin Securities, Inc. (Respondents)

Case Number: 04-03109

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Attilo Catani and Marie Catani hereinafter collectively referred to as "Claimants":  
Vincent J. Imbesi, Esq., Avelino & Associates, P.C., New York, NY.

Respondent Kirlin Securities, Inc., hereinafter referred to as "Respondent": Barry M. Bordetsky,  
Esq., Kirlin Securities, Inc., Syosset, NY.

Respondent Thomas M. Mackenzie ("Mackenzie") did not enter an appearance in this matter.

Respondent Reynold Vaughan ("Vaughan") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: April 26, 2004.

Claimant Attilo Catani signed the Uniform Submission Agreement: April 26, 2004.

Claimant Marie Catani signed the Uniform Submission Agreement: April 26, 2004.

Statement of Answer filed by Respondent on or about: August 13, 2004.

Respondent signed the Uniform Submission Agreement: August 12, 2004.

Respondent Mackenzie did not file an Answer or sign a Uniform Submission Agreement.

Respondent Vaughan did not file an Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; negligence; fraud; breach of fiduciary duty; breach of the implied covenant of good faith and fair dealing; material omission of fact; fraudulent misrepresentation; negligent misrepresentation; professional negligence; breach of contract; fraudulent concealment; violations of §10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934; violation of §15 of the Securities and Exchange Act of 1934;

violations of §20 of the Securities and Exchange Act of 1934 and *respondeat superior*. The causes of action relate to technology, international, and growth equity mutual funds.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$157,000.00; pre and post-award interest at the statutory rate; attorneys' fees in an amount to be proven at the hearing; return of the NASD filing fee and arbitration session deposit; cost of expert witness fees in an amount to be proven at the hearing; other costs and expenses of bringing this arbitration in an amount to be proven at the hearing; and for such other relief as the arbitrators deem just and equitable.

Respondent requested that all causes of action be dismissed prior to the hearing.

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

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

On September 2, 2004, Mackenzie filed for bankruptcy protection. Accordingly, all claims against Respondent Mackenzie were automatically stayed.

On July 23, 2004, Claimants dismissed, with prejudice, all claims against Respondent Vaughan.

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, 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. Respondent is liable for and shall pay to the Claimants compensatory damages in the amount of \$36,000.00.
2. Any and all relief not specifically addressed herein 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 persons at the time of the events giving rise to the dispute. Accordingly, Kirlin Securities, Inc., 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

**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 @ \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: December 3, 2004 1 session

Two (2) Hearing Sessions @ \$1,125.00 per session = \$ 2,250.00  
Hearing Date: September 19, 2005 2 sessions

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Total Forum Fees = \$ 3,375.00

1. The Panel has assessed \$675.00 of the forum fees jointly and severally against the Claimants.
2. The Panel has assessed \$2,700.00 of the forum fees against the Respondent.

**Fee Summary**

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 675.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund Due Claimants	= \$ 450.00

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 2,700.00</u>
Total Fees	= \$ 7,900.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,700.00

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

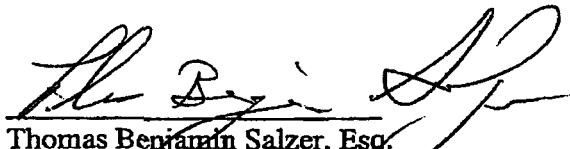
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**ARBITRATION PANEL**

Thomas Benjamin Salzer, Esq.	-	Public Arbitrator, Presiding Chairperson
Craig Scott Bartlett, Jr.	-	Public Arbitrator
Jerry Brown	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Thomas Benjamin Salzer, Esq.  
Public Arbitrator, Presiding Chairperson

Sept. 23, 2005  
Signature Date

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Craig Scott Bartlett, Jr.  
Public Arbitrator

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

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Jerry Brown  
Non-Public Arbitrator

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Signature Date

September 26, 2005  
Date of Service (For NASD Dispute Resolution use only)

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**ARBITRATION PANEL**

Thomas Benjamin Salzer, Esq.	-	Public Arbitrator, Presiding Chairperson
Craig Scott Bartlett, Jr.	-	Public Arbitrator
Jerry Brown	-	Non-Public Arbitrator

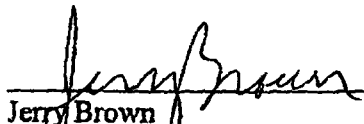
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