

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

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In the Matter of the Arbitration Between:

Edward W. Cochran and Anne Spoeneman a/k/a Anne S. Cochran, Trustee of the EWC Retirement Plan (Claimants) vs. Thomas A. Gallo, Gregory Gallo, Kirlin Securities, Inc., and M.S. Farrell & Co., Inc. (Respondents)

Case Number: 04-03406

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants Edward W. Cochran, individually ("E. Cochran") and Anne Spoeneman a/k/a Anne S. Cochran, Trustee of the EWC Retirement Plan ("EWC") hereinafter collectively referred to as ("Claimants"): Edward F. Siegel, Esq., The Law Office of Edward F. Siegel Cleveland, OH.

Respondents Thomas A. Gallo ("T. Gallo"), Gregory Gallo ("G. Gallo"), Kirlin Securities, Inc. ("Kirlin"), and M.S. Farrell & Co., Inc. ("M.S. Farrell") hereinafter collectively referred to as ("Respondents"): Issac M. Zucker, Esq., Law Office of Issac Zucker, Syosset, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 3, 2004.

E. Cochran signed the Uniform Submission Agreement: April 26, 2004

EWC signed the Uniform Submission Agreement: April 26, 2004.

Joint Statement of Answer filed by Respondents on or about: July 27, 2004.

A. Gallo did not sign the Uniform Submission Agreement.

G. Gallo did not sign the Uniform Submission Agreement.

Kirlin did not sign the Uniform Submission Agreement.

M.S. Farrell did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of contract; misrepresentation; breach of fiduciary duty; and; failure to supervise. The causes of action relate to the purchase of "units" stock in Innapharma, Inc; by Respondents on the Claimants' behalf.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$165,864.42; interest at the rate of 10% per annum on \$50,000.00 accruing from November 1994 and on \$115,864.42 accruing

from October 2000; attorneys' fees; and arbitration costs.

Respondents requested dismissal of the Statement of Claim in its entirety; costs; attorneys' fees; forum fees; and any other relief the Panel deems just and equitable.

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

Respondents T. Gallo, G. Gallo, Kirlin, and M.S. Farrell did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the commencement of the hearing, Claimants withdrew with prejudice all claims against Respondent G. Gallo. Additionally, Claimants and G. Gallo jointly requested that the Panel expunge all reference of this arbitration from Respondent G. Gallo's CRD records.

At the hearing, Claimants requested that the Panel allow the pleadings to be amended to conform to the testimony given by E. Cochran. After hearing oral arguments from all parties on this request and, after due deliberation by the arbitrators, the Panel determined to grant Claimants' request.

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. Respondents T. Gallo and M.S. Farrell are jointly and severally liable for and shall pay to Claimant E. Cochran compensatory damages in the amount of \$50,000.00 plus interest at the rate of 4% per annum accruing from December 27, 2005 until the Award is paid.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gregory Gallo's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Gregory Gallo must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

3. 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
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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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Kirlin Securities, Inc., and M.S. Farrell & Co., Inc., are parties.

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

August 15, 16, and 17, 2005 adjournment requested by Respondents	= \$ 1,125.00
T. Gallo's share	= \$ 281.25
G. Gallo's share	= \$ 281.25
Kirlin's share	= \$ 281.25
M.S. Farrell's share	= \$ 281.25

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$ 2,250.00
Pre-hearing conferences:	
October 14, 2004	1 session
September 15, 2005	1 session
Two (2) Hearing sessions @ \$1,125.00 per session	= \$ 2,250.00
Hearing Date:	
December 27, 2005	2 sessions
Total Forum Fees	= \$ 4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against E. Cochran.

2. The Panel has assessed \$2,250.00 of the forum fees, jointly and severally, against T. Gallo and M.S. Farrell.

**Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$	300.00
<u>Total Fees</u>	= \$	300.00
<u>Less payments</u>	= \$	300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	0.00

2. Claimant E. Cochran is solely liable for:

<u>Forum Fees</u>	= \$	2,500.00
<u>Total Fees</u>	= \$	2,500.00
<u>Less payments</u>	= \$	1,125.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	1,375.00

3. Kirlin is solely liable for:

<u>Member Fees</u>	= \$	5,200.00
<u>Adjournment Fee</u>	= \$	281.25
<u>Total Fees</u>	= \$	5,481.25
<u>Less payments</u>	= \$	5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	281.25

4. M.S. Farrell is solely liable for:

<u>Member Fees</u>	= \$	5,200.00
<u>Adjournment Fee</u>	= \$	281.25
<u>Total Fees</u>	= \$	5,481.25
<u>Less payments</u>	= \$	0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	5,481.25

5. M.S. Farrell and T. Gallo are jointly and severally liable for:

<u>Forum Fees</u>	= \$	2,500.00
<u>Total Fees</u>	= \$	2,500.00
<u>Less payments</u>	= \$	0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	2,500.00

6. T. Gallo is solely liable for:

<u>Adjournment Fee</u>	= \$	281.25
<u>Total Fees</u>	= \$	281.25
<u>Less payments</u>	= \$	281.25
<u>Balance Due NASD Dispute Resolution</u>	= \$	281.25

7. G. Gallo is solely liable for:

<u>Adjournment Fee</u>	= \$	281.25
<u>Total Fees</u>	= \$	281.25
<u>Less payments</u>	= \$	281.25
<u>Balance Due NASD Dispute Resolution</u>	= \$	281.25

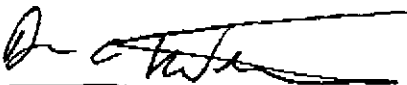
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

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**ARBITRATION PANEL**

Marc A. Winters	- Public Arbitrator, Presiding Chairperson
Frank C. Fogl, Jr., Esq.	- Public Arbitrator
Bert Cliff	- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Marc A. Winters  
Public Arbitrator, Presiding Chairperson

1/6/06  
Signature Date

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Frank C. Fogl, Jr., Esq.  
Public Arbitrator

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

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Bert Cliff  
Non-Public Arbitrator

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

January 11, 2006  
Date of Service (For NASD Dispute Resolution use only)

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Marc A. Winters

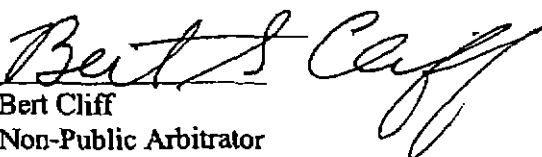
Public Arbitrator, Presiding Chairperson

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Frank C. Fogl, Jr., Esq.

Public Arbitrator

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

  
Bert Cliff  
Non-Public Arbitrator

1-5-06  
Signature Date

January 11, 2006

Date of Service (For NASD Dispute Resolution use only)

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Signature Date

\_\_\_\_\_  
*Frank C. Fogl, Jr.*

Frank C. Fogl, Jr., Esq.

Public Arbitrator

\_\_\_\_\_  
*1/5/06*

Signature Date

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Bert Cliff

Non-Public Arbitrator

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Signature Date

\_\_\_\_\_  
*January 11, 2006*

Date of Service (For NASD Dispute Resolution use only)