

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant  
Marcia L. Gersten

Case Number: 04-05882

Names of Respondents  
Kaplan & Co. Securities, Inc.  
Jed Kaplan  
Eric K. Blau

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Marcia L. Gersten, hereinafter referred to as "Claimant": James D. Sallah, Esq., Klein & Sallah, L.L.C., Boca Raton, Florida.

For Kaplan & Co. Securities, Inc. ("Kaplan Securities"), Jed Kaplan ("Kaplan") and Eric K. Blau ("Blau"), hereinafter collectively referred to as "Respondents": Stephen A. Mendelsohn, Esq. and Geoffrey M. Cahen, Esq., Greenberg Traurig, P.A., Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2004.

Claimant signed the Uniform Submission Agreement: August 19, 2004.

Statement of Answer filed by Respondents on or about: October 14, 2004.

Respondent Kaplan signed the Uniform Submission Agreement: October 14, 2004.

Respondent Blau signed the Uniform Submission Agreement: October 14, 2004.

Respondent Kaplan Securities did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of Chapter 517 of the Florida Statutes; fraudulent inducement; common law fraud; breach of fiduciary duty; negligence and gross negligence; respondeat superior; and, violations of Florida Blue Sky Law - fraud. The causes of action relate to, but are not limited to, Claimant's investments in support class or derivative collateralized mortgage obligations ("CMOs").

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages of no less than \$80,000.00; unspecified punitive damages; disgorgement of commissions and profits; accrued interest; costs and administrative expenses; and, any other relief that the Panel deemed just and proper.

Respondents requested that the Panel deny all Claimant's claims; award Respondents attorneys' fees pursuant to Chapter 517 of the Florida Statutes; and, assess all forum fees against the Claimant.

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

Respondent Kaplan Securities did not file with NASD Dispute Resolution ("NASD") a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On February 6, 2006, Claimant and Respondents entered into a Settlement Agreement with respect to all claims arising out of this Arbitration.

In the Settlement Agreement, the parties agreed that all references to this Arbitration shall be expunged from the NASD Central Registration Depository ("CRD") records of Respondent Kaplan and Respondent Blau. Claimant acknowledged, that to the best of her knowledge, Respondent Kaplan and Respondent Blau were not involved in any investment related sales practice violation, forgery, theft, misappropriation or conversion of funds. As such, on April 10, 2006, the parties filed with NASD an Application for Stipulated Award of Expungement, for the Panel's consideration. Claimant and Respondents jointly submitted this Stipulated Award that provides for the dismissal of all claims and for the entry of a Stipulated Award Directing Expungement.

On or about April 24, 2006, the Panel issued an Order that required the parties to submit a redacted executed Settlement Agreement for their review. On April 28, 2006, the parties complied with the Panel's Order. On or about May 22, 2006, the Panel granted the parties' request for the entry of a Stipulated Award of Expungement.

The parties 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 Application for Stipulated Award Directing Expungement, the record in this matter and the parties' proposed Stipulated Award, the

Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims against Respondents Kaplan Securities, Kaplan and Blau are dismissed with prejudice.

The Panel recommends the expungement of all references to this arbitration from Respondents Kaplan and Blau's registration records maintained by the NASD CRD. Respondents Kaplan and Blau were not involved in any investment related sales practice violation, forgery, theft, misappropriation or conversion of funds. This recommendation is made with the understanding that, pursuant to NASD Rule 2130 and NASD Notice to Members 04-16, Respondents Kaplan and Blau must obtain confirmation from a court of competent jurisdiction before the NASD 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.

All parties will bear their own attorneys' fees and costs.

### **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
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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 person(s) at the time of the events giving rise to the dispute. In this matter, Respondent Kaplan Securities is a member firm and a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**Forum Fees and Assessments**

The Arbitrator/Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

(2) Pre-hearing conferences with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences: January 21, 2005	1 session
September 13, 2005	1 session
(5) Hearing sessions @ \$750.00/session	= \$3,750.00
Hearings: September 21, 2005	2 sessions
September 22, 2005	2 sessions
February 6, 2006	1 session

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Total Forum Fees	= \$5,250.00
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The Panel has assessed \$2,625.00 of the forum fees to Claimant.

The Panel has assessed \$2,625.00 of the forum fees to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services 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	= \$ 225.00
<u>Forum Fees</u>	<u>= \$2,625.00</u>

Total Fees	= \$2,850.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$1,875.00

Respondent Kaplan Securities is solely liable for:

<u>Member Fees</u>	<u>= \$3,550.00</u>
Total Fees	= \$3,550.00
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,625.00</u>
Total Fees	= \$2,625.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,625.00

All balances are due and payable to NASD Dispute Resolution

**ARBITRATION PANEL**

James A. Porter, Esq.	-	Public/Non-Public Arbitrator, Presiding Chair
Jerrold Levine, CPA	-	Public Arbitrator
Joseph J. Slotnik	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
James A. Porter, Esq.  
Public/Non-Public Arbitrator, Presiding Chair

May 30, 2006  
Signature Date

/s/  
Jerrold Levine, CPA  
Public/Non-Public Arbitrator

May 24, 2006  
Signature Date

/s/  
Joseph J. Slotnik  
Non-Public Arbitrator

May 25, 2006  
Signature Date

May 30, 2006  
Date of Service (For NASD office use only)

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Arbitration No. 04-05882  
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Respondents are jointly and severally liable for:

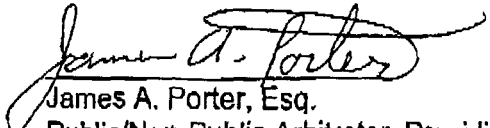
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James A. Porter, Esq.  
Public/Non-Public Arbitrator, Presiding Chair

5/30/06  
Signature Date

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Jerrold Levine, CPA  
Public/Non-Public Arbitrator

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Signature Date

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## NASD Dispute Resolution

Arbitration No. 04-05882

Award Page 5 of 5

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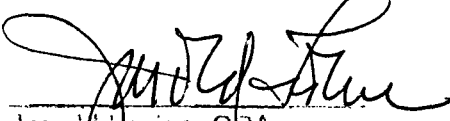
ARBITRATION PANEL

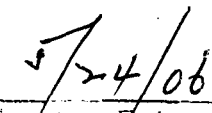
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Award Page 5 of 5

**RECEIVED**

Total Fees	MAY 26 2006	= \$2,850.00
Less payments		= \$ 975.00
Balance Due NASD Dispute Resolution	<b>FL ARBITRATION</b>	= \$1,875.00

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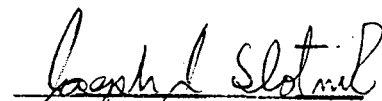
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