

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kirlin Securities, Inc. (Claimant) vs. Tracy Beth Cohen-McLuckie and GunnAllen Financial, Inc. (Respondents)

Case Number: 05-05594

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Kirlin Securities, Inc., hereinafter referred to as "Claimant": Issac M. Zucker, Esq., Law Offices of Isaac M. Zucker, PLLC, Mineola, NY.

Respondent Tracy Beth Cohen-McLuckie, hereinafter referred to as "McLuckie": Michael P. Gilmore, Esq., Sims Moss Kline & Davis, LLP, Mineola, NY.

Respondent GunnAllen Financial, Inc., hereinafter referred to as "GunnAllen": Jay M. Israel, Esq., GunnAllen Financial Inc., Lindenhurst, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 1, 2005.

Claimant signed the Uniform Submission Agreement: October 31, 2005.

Respondents McLuckie and GunnAllen did not submit Statement of Answers or Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, tortious interference with business relations, misappropriation of trade securities, conversion, unfair competition, aiding and abetting, and raiding.

RELIEF REQUESTED

Claimant requested that the Panel:

1. Temporarily, preliminarily and permanently enjoin the Respondents and their representatives, agents, employees, attorneys and representatives, from:
 - (a) utilizing Kirlin's records, customer lists, customer leads and other proprietary information and trade secrets;
 - (b) utilizing or furnishing any third-party any of the documents misappropriated

- by Respondents from Kirlin's premises or extracts or copies thereof;
- (c) contacting in any way Kirlin's current customers, other than customers which McLuckie obtained through social or family contact;
- (d) soliciting Kirlin's current employees.

2. Direct Respondents to:

- (a) list all Kirlin clients who received a letter from Respondents;
- (b) McLuckie to list all documents taken by them from Kirlin;
- (c) McLuckie to specify where such documents and any copies or extracts thereof are now located;
- (d) Respondents to return to Kirlin all documents, copies and extracts wrongfully removed from Kirlin's premises.

3. Order Respondents to account for and pay over to Kirlin all commissions, compensation, profits, monies, accruals, increments or other benefits derived from or received by them or any of their agents or affiliates as a result of their unlawful conduct in connection with any and all securities transactions engaged in by present or former clients of Kirlin, other than customers which McLuckie obtained through social or family contact.

4. Order GunnAllen to account for and pay over to Kirlin all compensation, profits, monies, accruals, increments or other benefits derived from or received by GunnAllen or any of its agents or affiliates as a result of Respondents' unlawful conduct.

5. Award damages in an amount to be determined at the hearing, punitive damages, costs, interest, reasonable attorney's fees as allowed by law and such other and further relief as the Panel may find appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Tracy Beth Cohen-McLuckie and GunnAllen Financial, Inc. did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements 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 or about March 27, 2006, the Panel entered its Order that Claimant, within thirty (30) days, notify NASD Dispute Resolution ("NASD") and Respondents in writing whether it wishes to proceed with this case and to also provide four mutually agreeable dates to schedule a pre-hearing conference. On or about April 25, 2006, Claimant notified NASD that it wished to pursue this matter and would confer with Respondents and submit proposed dates for a telephonic pre-hearing conference.

By letter dated July 13, 2006, NASD requested that the parties notify this office no later than July 28, 2006 whether they wished to pursue this case, and that if no response was received, the matter would be referred to the Panel for determination.

By letter dated December 4, 2006, this matter was referred to the Panel for a determination as to how they wish to proceed. After due deliberation, the Panel determined to dismiss the case without prejudice.

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

1. Claimant's claims are dismissed without prejudice.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 500.00
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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 at the time of the events giving rise to the dispute. Accordingly, Kirlin Securities, Inc., and GunnAllen Financial, Inc. are parties.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 18, 2005 adjournment by Claimant and Respondents	= \$ 1,000.00
Claimant's share	= \$ 500.00
Respondents' share	= \$ 500.00

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.

1. Member firm Kirlin Securities, Inc. is assessed:

Injunctive relief surcharge	= \$2, 500.00
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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 last four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,000.00	= \$1,000.00
Pre-hearing conference(s): March 27, 2006 1 session	
<u>Total Forum Fees</u>	<u>= \$1,000.00</u>

1. The Panel has assessed \$1,000.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Injunctive Relief Fees	= \$ 2,500.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$ 1,000.00
<u>Total Fees</u>	<u>= \$ 8,950.00</u>
<u>Less payments</u>	<u>= \$ 8,950.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Gunn Allen is solely liable for:

Member Fees	= \$ 4,450.00
<u>Total Fees</u>	<u>= \$ 4,450.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents GunnAllen and McLuckie are jointly and severally liable for:

Adjournment Fee	= \$ 500.00
<u>Total Fees</u>	<u>= \$ 500.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 500.00

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

ARBITRATION PANEL

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Gayle S. Sanders, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Bruce K. Isenberg
Bruce K. Isenberg, Esq.
Public Arbitrator, Presiding Chairperson

12/30/06
Signature Date

Gayle S. Sanders, Esq.
Public Arbitrator

Signature Date

Jerome H. Levy
Non-Public Arbitrator

Signature Date

January 9, 2007
Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Gayle S. Sanders, Esq.	-	Public Arbitrator
Jerome H. Levy	-	Non-Public Arbitrator

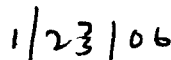
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Bruce K. Isenberg, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Gayle S. Sanders, Esq.
Public Arbitrator



Signature Date

Jerome H. Levy
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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