

## AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant

Jon B. Klima

v.

Arbitration No.  
95-03765

Name of Respondent

Kevin McCarthy, Craig Cunningham,  
Keith Hale, Paul Courtright,  
Brian Moore and Atlanta-One, Inc.

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### CASE INFORMATION

Statement of Claim received:	August 2, 1995
Claimant's Submission Agreement signed:	July 28, 1995
Stipulation for Entry of Judgment filed:	November 4, 1997
Claimant's Request for Entry of Judgment filed:	May 11, 1998

### CASE SUMMARY

Claimant alleged that Respondents committed fraud, misrepresented and omitted material facts in connection with the sale of securities, were negligent, breached their contract with the Claimant, sold unregistered securities, failed to supervise their employees, breached the fiduciary duty owed to the Claimant, and breached the implied covenant of good faith and fair dealing.

Respondents did not submit an answer to Claimant's Statement of Claim.

### RELIEF REQUESTED

Claimant requested \$67,613.00 in compensatory damages, pre- and post-award interest, costs, attorney's fees, and punitive damages.

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

The parties agreed that the Award in this matter may be executed either in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties agreed to receive conformed copies of the Award while the original remains on file with the NASD Regulation, Inc., Office of Dispute Resolution.

On January 9, 1996 Claimant withdrew the claims against Craig Cunningham, Keith Hale, and Brian Moore.

On November 4, 1997 the Office of Dispute Resolution received a Stipulation for Entry of Judgment between the Claimant Brad Klima and Respondents K Michael & Company, f/k/a Atlanta-One, Inc., and Kevin McCarthy.

On May 11, 1998 Claimant requested Entry of Judgment.

### **AWARD**

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

- 1) Please see Exhibit A, attached.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

No forum fees were incurred.

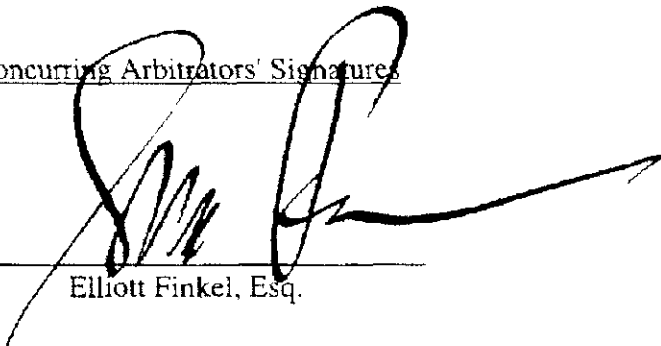
### **OTHER FEES**

Pursuant to Rule 10333 of the Code, Respondent Atlanta-One, Inc. has paid to NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

ARBITRATORS

<u>Name</u> .....	<u>Public / Industry</u>
Elliott Finkel, Esq.	Public Arbitrator
John F. Cordova	Industry Arbitrator
Irving Porush	Public Arbitrator

Concurring Arbitrators' Signatures



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Elliott Finkel, Esq.

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John F. Cordova

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Irving Porush

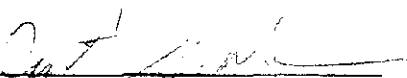
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ARBITRATORS

<u>Name</u> .....	<u>Public / Industry</u>
Elliott Finkel, Esq.	Public Arbitrator
John F. Cordova	Industry Arbitrator
Irving Porush	Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Elliott Finkel, Esq.

  
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John F. Cordova

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Irving Porush

Date of Service: \_\_\_\_\_

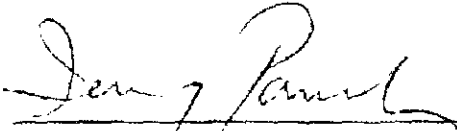
ARBITRATORS

<u>Name</u> .....	<u>Public / Industry</u>
Elliott Finkel, Esq.	Public Arbitrator
John F. Cordova	Industry Arbitrator
Irving Porush	Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Elliott Finkel, Esq.

\_\_\_\_\_  
John F. Cordova

  
\_\_\_\_\_  
Irving Porush

Date of Service: JULY 1, 1998

LAW OFFICES OF STEVE A. BUCHWALTER  
STEVE A. BUCHWALTER, ESQ.  
16133 Ventura Blvd., Suite 635  
Encino, CA 91436  
(818) 501-8987

Attorney for CLAIMANT

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the  
Arbitration between

Brad Klima

Claimant,

v.

Kevin McCarthy and Atlanta-One,  
Inc.,

Respondents.

NASD NO. 95-03765

STIPULATION FOR ENTRY OF  
JUDGMENT

1. IT IS HEREBY STIPULATED by and between Brad Klima  
hereinafter referred to as "Claimant" and K Michael & Company,  
fka Atlanta One, successor in interest by name change, and Kevin  
McCarthy (hereinafter referred to as "Respondents", that Judgment  
be entered in favor of Claimant and against Respondents, and each  
of them, as follows:

A) For the principal sum of \$27,000.00.

2. IT IS FURTHER STIPULATED THAT no Judgment shall be  
entered pursuant to this Stipulation as long as Respondents pay  
the sum of \$27,000.00 as follows:

A) One payment of \$3,000.00 to be paid on or before

**EXHIBIT A**

1 October 17, 1997,

2           B) Eight (8) monthly payments each in the sum of  
3 \$2,000.00 commencing November 15, 1997, and continuing on the  
4 15th of each month thereafter at which time the sum of \$27,000.00  
5 will have been paid in full.

6           C) The Respondents shall have a ten (10) day grace  
7 period in which to make the payments set forth above. In the  
8 event any monthly payment is more than ten (10) days in arrears,  
9 then the Respondents shall receive written notice of the default.  
10 If the default is not cured within ten (10) days of the written  
11 notice, then upon written notification to the NASD, or upon ex  
12 parte declaration by Plaintiff as to the default in payments (if  
13 Claimant chooses the Court's assistance), with notice by mail to  
14 Respondents, Claimant shall be authorized to have a judgment for  
15 all payments made pursuant to this Stipulation. The Respondents  
16 shall be entitled to three (3) written notices of default. In  
17 the event of a fourth default, then upon expiration of the ten  
18 (10) day grace period, Claimant shall be authorized to have a  
19 judgment entered pursuant to the Stipulation as set forth above.

20           3. IT IS FURTHER STIPULATED that findings of fact and  
21 conclusions of law are hereby waived.

22           4. IT IS FURTHER STIPULATED that any judgment entered in  
23 accordance with the terms and conditions of this Stipulation may  
24 be rendered and entered by an NASD Arbitration Panel, Court  
25 Commissioner, or any other duly authorized person.

26           5. IT IS FURTHER STIPULATED that judgment shall be entered  
27 and become final for all purposes upon entry of judgment and each

1 party waives any right to appeal therefrom.

2 6. IT IS FURTHER STIPULATED that Respondents, by entering  
3 this Stipulation, make a general appearance in the proceedings  
4 hereby and thereby consent to the exercise of the jurisdiction of  
5 all California Courts and/or the NASD Arbitration with respect to  
6 proceedings herein and consent to the jurisdiction of said courts  
7 to issue any order, judgments or to take any other action with  
8 respect to the proceedings herein.

9 7. IT IS FURTHER STIPULATED that Respondents waive notice  
10 of entry of judgment and notice of hearing re entry of judgment  
11 and that judgment may be entered on an ex parte application of  
12 Claimant.

13 8. IT IS FURTHER STIPULATED that Respondents waive  
14 California Code of Civil Procedure Section 583.210, that the  
15 Summons and Complaint be served and return made within three  
16 years and Respondent further waives any Statute of Limitations  
17 defenses.

18 9. IT IS FURTHER STIPULATED that Claimant may file any and  
19 all copies (specifically including photocopies and counter-part  
20 signature copies) of exhibits attached to the Statement of Claim  
21 and/or Complaint at the time judgment is entered in lieu of the  
22 original.

23 10. IT IS FURTHER STIPULATED that Respondents expressly  
24 agree that this Stipulation, if brought before a Court of Law  
25 have the full force and effect of an Arbitration Judgment.

26 11. IT IS FURTHER STIPULATED that if any portion of this  
27 Stipulation is unenforceable, all remaining portions will remain



1 in effect.

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3 Dated: October 14, 1997

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11 Dated: October \_\_\_\_\_, 1997

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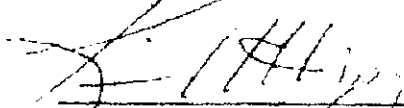
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Atlanta One, Inc.

BY: 

Kevin McCarthy  
President

  
Kevin McCarthy  
Respondent

Steve Buchwalter,  
Attorney for Claimant.  
Brad Klima

Brad Klima, Claimant

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in effect.

Dated: October \_\_\_\_\_, 1997

Atlanta-One, Inc.

BY: \_\_\_\_\_  
Kevin McCarthy  
President

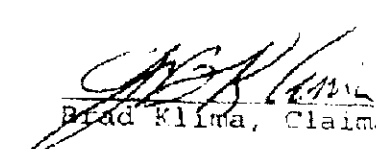
Dated: October \_\_\_\_\_, 1997

\_\_\_\_\_  
Kevin McCarthy  
Respondent

Dated: October \_\_\_\_\_, 1997

\_\_\_\_\_  
Steve Buchwallter,  
Attorney for Claimant,  
Brad Klima

Dated: October 21, 1997

  
\_\_\_\_\_  
Brad Klima, Claimant

1                    DECLARATION OF RESPONDENT KEVIN MCCARTHY

2            I, KEVIN MCCARTHY, declare:

3            1.    That I am not represented by an attorney herein and am  
4 representing myself;

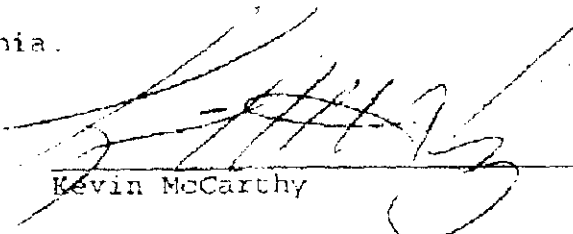
5            2.    That I understand the contents of the attached  
6 Stipulation for Entry of Judgment and have read same;

7            3.    That I voluntarily, knowingly and intelligently waive  
8 my civil rights to trial and/or Arbitration, notice and hearing.

9            4.    That I know and understand that a Judgment may be  
10 entered against me as a result of my signing this document, in  
11 the sum of \$27,000.00.

12           I declare under penalty of perjury under the laws of the  
13 State of California that the foregoing is true and correct.

14           Executed this 14 day of October, 1997, in the  
15 City of San Jose, County of San Jose, State of  
16 California.

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19 Kevin McCarthy  
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