

N.A.S.D. REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Exchange Management Company, Inc

96-00028

Name of Respondents

Gilford Securities, Inc.

REPRESENTATION

Claimant Exchange Management Company, Inc. ("claimant") was represented by Jeffrey F. Montgomery, Esq. of Cushing, Morris, Ambruster & Jones, LLP, located in Atlanta, GA.

Respondent Gilford Securities, Inc. ("respondent") was represented by Joel Levinson, Esq., in-house counsel located in New York, N.Y.

CASE INFORMATION

The Statement of Claim was filed on December 27, 1995. Claimant's Submission Agreement was signed on December 15, 1995.

The Statement of Answer was filed by respondent on February 29, 1996. Respondent's Submission Agreement was signed on February 29, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	November 19, 1996	3 Sessions
	February 12, 1997	2 Sessions
	February 13, 1997	2 Sessions

Hearing Location: Nikko Hotel Atlanta, Ga.

CASE SUMMARY

Claimant alleged that beginning January 5, 1995, claimant retained respondent to act as its exclusive placement agent in connection with the private placement of its convertible preferred stock, and, in connection therewith, claimant paid respondent \$50,000 as an advance against placement expenses. On or about March 10, 1995, respondent aborted the private placement for proper reasons (as stipulated by the parties), and, after repeated requests in June of 1995 respondent forwarded to claimant a check in the amount of \$8,906.57. Until this check was delivered, respondent's representatives dealt with claimant's requests for a refund with either abuse or neglect. Following the receipt of this check, claimant made numerous requests for an accounting of the expenses incurred in connection with the private placement, particularly in connection with the legal services rendered by the law firm Kelly, Drye & Warren, LLP. Claimant alleged that the Kelly, Drye & Warren charges relating to non-environmental matters were excessive and did not represent reasonable and good faith expenses actually incurred at arm's length.

Respondent neglected to make any further investigation regarding legal fees. Claimant alleged that in its actions, respondent failed to observe high standards of commercial honor and just and equitable principles of trade as required by Section 1 of the Rules of Fair Practice of the NASD by refusing to provide claimant with a reasonably detailed accounting of legal fees and expenses and failing to address claimant's concern and belief that such fees were excessive and unsubstantiated. Claimant further alleged that respondent owed claimant a duty of good faith and fair dealing as the exclusive placement agent in the proposed placement of claimant's securities, and that respondent violated its duty of good faith and fair dealing by refusing to provide claimant with a reasonably detailed accounting of legal fees and expenses and failing to address claimant's concern and belief that such fees were excessive and unsubstantiated.

Respondent responded that the legal fees incurred by Kelly, Drye & Warren, LLP were reasonable, that the letter of agreement between respondent and claimant did not grant claimant the right to approve or pre-approve expenses incurred by respondent and that respondent was completely satisfied with the legal services rendered in connection with the private placement and that Kelley, drye & Warren, LLP had provided adequate billing documentation.

RELIEF REQUESTED

Claimant requested that an award requiring respondent to produce a detailed accounting of Kelly, Drye & Warren, LLP's fees and expenses and, to the extent such fees and expenses were determined by the panel to exceed reasonable and good faith expenses actually incurred at arm's length, such excess be required to be remitted to claimant. Claimant further requested punitive damages in the amount of \$100,000 and requested all costs, expenses and reasonable attorney's fees associated with this arbitration, and all other relief available.

Respondent requested the Statement of Claim be dismissed in its entirety and claimant be required to pay all filing fees and forum fees and that claimant be ordered to reimburse Gilford Securities for their reasonable expenses, including all lodging, legal fees, travel costs, expert witness fees, and costs which are incurred in connection with the defense of these claims.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

AWARD

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

1. Respondent Gilford Securities, Inc. be and hereby is liable to claimant in the amount of \$2,000.00 in compensatory damages.
2. Respondent Gilford Securities, Inc. be and hereby is liable and shall pay claimant the sum of \$4,000.00 in punitive damages pursuant to Bonar v.

Dean Witter Reynolds, Inc. 835 F.2d 1378 (11th Cir. 1988).

3. Each party shall bear it's own costs, including attorney's fees.
4. All other relief requests be and hereby are denied.

FORUM FEES

The arbitrators have determined that NASD Regulation shall retain the \$150.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees pursuant to Rule 10332(c) of the Code of Arbitration Procedure:

7 Sessions x \$500.00

\$3,500.00

The arbitrators have determined to assess the entire cost of arbitration against the respondent. Therefore Gilford Securities, Inc. be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$3,500.00, less \$500.00 hearing session deposit previously remitted by claimant, net \$3,000.00 due. Respondent Gilford Securities, Inc. be and hereby is liable and shall pay claimant the sum of \$500.00 which represents reimbursement for the hearing session deposit previously remitted by claimant.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES



Daniel E. Gulden, Esq.
Public Chairperson


Date of Decision 4/29/97

Terry Weiss, Esq.
Industry Panelist

Stuart Meyers
Public Panelist

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