

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Mark Alloy vs. William P. Burke, Jr., Lawrence Wachler, and Gilford Securities, Inc.

Case Number: 96-01982

Hearing Site: San Francisco, California.

I. PARTIES

Claimant is Mark Alloy. Respondents are William P. Burke, Jr., Lawrence Wachler and Gilford Securities, Inc.

II. COUNSEL

Counsel for Mark Alloy at the initiation of this action was Patrick Baldwin, Esq. and Christine McNamara, Esq. of the Law Offices of Patrick Baldwin. At some point in time, counsel for Mark Alloy changed to the Law Offices of Brian M. Kandel. Counsel for Gilford Securities, Inc. and Lawrence Wachler was originally Joel Levinson, Esq. At some point in time, the representation of Gilford Securities was undertaken by Norman Lawi, Esq. Mr. Lawi represented Gilford Securities, Inc. and Lawrence Wachler throughout the arbitration hearings.

William P. Burke, Jr. was initially represented by Tenzer Greenblatt, but thereafter was represented by himself throughout these proceedings.

III. CLAIMS

The initial claim, which was filed on or about May 8, 1996, by Mark Alloy against respondent Gilford Securities, Inc., respondent Burke, and respondent Wachler alleged thirteen causes of action.

Compensatory damages of at least \$107,065.00 was requested with a rate of return

thereon equal to the Standard & Poors 500 Index since the date on which claimant purchased each investment; costs and attorneys fees; punitive damages.

The answer of respondent Burke contends claimant Alloy initiated the disputed investments without involvement of respondent Burke. Burke generally denies all allegations of wrongdoing of any kind on his part. Burke alleges thirteen affirmative defenses. It should be noted that initially Mr. Burke was represented by the law firm of Tenzer. The answer of respondents Lawrence Wachler and Gilford Securities, Inc. alleged:

"Much of the claimant's complaint must be dismissed because the allegations even if true, do not involve Gilford Securities, Inc., Lawrence Wachler or William Burke while employed at Gilford Securities, Inc. In fact, the only relevant portion of claimant's allegations relate to 40,000 shares with a total purchase price of \$25,454. Therefore, any claim over and above \$25,454 must be dismissed even before examining the true facts and circumstances pertaining to the purchases of Space Plex by claimant through Gilford Securities, Inc."

Gilford Securities, Inc. and Wachler allege nine affirmative defenses which will not be here repeated.

IV. PRE-HEARING MOTIONS

1. A hearing was held on August 10, 2000, at which the Arbitration Tribunal considered the motions of claimant Mark Alloy for pre-judgment attachment and to amend his claim and the motion of respondents Gilford Securities, Inc and Lawrence Wachler for dismissal for lack of prosecution.
2. An order was signed by the Arbitration Tribunal on or about August 11, 2000, with the following orders: (1) the order for dismissal for lack of prosecution was denied; (2) the motion to amend the claim was granted only as to William P. Burke, Jr., as there had been no opposition by him and said motion was denied as to the remaining respondents;

and (3) the motion for prejudgment attachment was denied.

3. Consequently there was an amendment of the claim of Mark Alloy against respondent Burke as follows: a fourteenth cause of action was alleged for breach of contract; a fifteenth cause of action was alleged for implied contract and quantum maruit.

V. DISCOVERY

An order was issued on September 8, 2000, requiring respondents to produce documents demanded by Mark Alloy, together with appropriate verifications and a privilege log. The order further provided:

"To the extent there are further motions with regard to the enforcement of this discovery order, the prevailing party will recover all reasonable attorneys fees incurred and any incidental administrative costs will be assessed against the party not prevailing in said motion;" On or about September 13, 2000, an order was issued by the tribunal in response to claimant's motion to compel compliance with the order of the tribunal of September 8, 2000. That order stated in part:

"A determination of appropriate sanctions at this time is premature until the evidence that is to be presented is considered by this tribunal so that it may determine the extent of the violations of the discovery order."

VI. EVIDENTIARY HEARINGS

Evidentiary hearings in this proceeding were held on October 18, 2000, and on January 23, 24, and 25, 2001. At those hearings opening statements were given by each side, oral testimony was produced by each side through both telephone testimony and in-person testimony. Substantial volumes of exhibits were offered and admitted. Expert testimony was offered by

Mark Alloy through Marvin Breen.

Respondent William Burke gave testimony by telephone but refused to answer numerous essential questions based on the assertion of his constitutional right against self incrimination.

Closing briefs were ordered to be produced by each side by February 22, 2001.

The arbitration tribunal has considered all of the evidence presented and the arbitration briefs submitted. The tribunal hereby renders its award as follows:

1. The arbitration tribunal finds that Mark Alloy was a reasonably sophisticated investor who did in fact have direct communications with the issuer of the stock that he claimed was misrepresented, Space Plex International, Ltd. (Space Plex);
2. Mark Alloy acquired stock in Space Plex for which he paid \$107,038.25;
3. There is no showing that Space Plex securities were properly qualified for sale in the State of California;
4. There is no showing that Space Plex securities were exempt from qualification under either the 1933 Securities Act or California Corporation Code sections 25102 et seq.;
5. The tribunal does not find that Gilford Securities, Inc. or Lawrence Wachler should be responsible for purchases made by Mark Alloy from firms other than Gilford Securities, Inc.;
6. The arbitration tribunal does not find that Lawrence Wachler should in any way be liable for any of the damages suffered by Mark Alloy;
7. Gilford Securities, Inc., was the employer of William P. Burke, Jr. when Mark Alloy purchased Space Plex securities in the amount of \$25,454.00;
8. Gilford Securities, Inc. is therefore deemed liable to Mr. Alloy for that amount together with interest. The award of such interest is discretionary with the

tribunal and, in the opinion of the tribunal, it is appropriate to award interest in the amount of \$11,000. Thus, the award against Gilford Securities, Inc. for investment losses amounts to \$35,454.

9. With regard to the failure of respondents Gilford and Burke to comply with discovery orders, the tribunal has already concluded that attorneys fees would be awarded claimant after a determination is made as to the extent of the violation by these respondents of the discovery order. It is hereby determined that appropriate sanction for the violation of the discovery order is that respondents Gilford and Burke pay \$5,000 in sanctions for their failure to comply with the discovery orders of this tribunal. This sanction has been imposed not only as a result of the violation of the rules of the NASD and the failure to comply with discovery orders, but also as a result of the expenditure of time and effort of all parties and the tribunal in dealing with this case without compliance with said discovery order. Thus, respondents Gilford and Burke are jointly and severally liable to Mark Alloy for the amount of \$40,545;
10. The difference between the amount of Space Plex securities purchased while Mr. Burke was employed by Gilford Securities, Inc. and the amount of Space Plex Mr. Alloy purchased elsewhere amounts to \$82,584. Of this amount, it appears that \$34,980 was purchased through a brokerage firm known as RAS. It has not been established, in the opinion of this tribunal that Mr. Burke is responsible for the purchases Mr. Alloy made at RAS. The difference between the amount Mr. Alloy purchased at RAS and the amount Mr. Alloy purchased through Mr. Burke other than through Gilford is \$47,604. As it has been determined by the tribunal that Space Plex securities were not properly qualified to be sold in California, this tribunal awards Mr. Alloy an additional \$47,604 against Mr. Burke only. This

tribunal also determines that interest is properly awarded on said purchases in an additional amount of \$23,800. Thus, the entire award against William Burke, Jr. amounts to \$111,858, of which Gilford Securities, Inc. is jointly and severally liable for \$40,454.

V. AWARD

The total award rendered in favor of Mark Alloy is \$111,858, of which William Burke, Jr. and Gilford Securities, Inc. are jointly and severally liable in the amount of \$40,450, and the balance of \$71,404 is the individual liability of William Burke, Jr.;

All costs assessed by the National Association of Securities Dealers incidental to the arbitration in these proceedings will be awarded jointly and severally against William Burke, Jr. and Gilford Securities, Inc. There will be no additional award for attorneys fees, costs, interest, or punitive damages.

VI. DISCIPLINARY REFERRAL

It is the opinion of this tribunal that disciplinary referral concerning Mr. Burke is appropriate.

VII. FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$200
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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(s) that employed the associated person(s) at the time of the

event(s) giving rise to the dispute. In this matter Gilford Securities Inc., the member firm, is a party.

Member surcharge = \$350

Adjournment Fees

The parties jointly sought to continue the January 6-7-8-9, 1998 hearing dates. The postponement fee was waived by the panel. The parties jointly sought to continue the June 15-18, 1998 hearing dates. The postponement fee was waived by the panel.

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. Fees associated with these proceedings are:

Two (2) Pre-hearing session(s) with a single arbitrator x \$300	= \$600
Pre-hearing conference: August 22, 2000 2 sessions	
Four (4) Pre-hearing sessions with Panel x \$750	= \$3,000
Pre-hearing conferences: May 20, 1997 1 session	
August 10, 2000 1 session	
October 12, 2000 1 session	
November 9, 2000 1 session	
Seven (7) Hearing sessions x \$750	= \$5,250
Hearing Dates: October 17, 2000 2 sessions	
October 18, 2000 1 session	
January 23, 2001 2 sessions	
January 24, 2001 2 sessions	
Total Forum Fees	= \$8,850

The Panel has assessed all of the forum fees and administrative costs jointly and severally to Gilford Securities Inc. and William Burke, Jr..

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant requested that security be provided at the October hearing sessions. = \$939

Fee Summary

1. Claimant Mark Alloy solely liable for:

<u>Initial Filing Fee</u>	= \$ 200
<u>Total Fees</u>	= \$ 200
<u>Less payments</u>	= \$ 950
Balance <Refund>	= <\$ 750>

2. Respondent Gilford Securities Inc. is solely liable for:

<u>Member Fees</u>	= \$ 350
<u>Total Fees</u>	= \$ 350
<u>Less payments</u>	= \$1,100
Balance <Credit>	= <\$ 750>


3. Respondents Gilford Securities, Inc. and William Burke, Jr. are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,850
<u>Administrative Fees</u>	= \$ 939
<u>Total Fees</u>	= \$9,789
<u>Less Gilford Securities credit (above)</u>	= \$ 750
Balance Due NASD Dispute Resolution, Inc.	= \$9,039

All balances are due and payable to NASD Dispute Resolution, Inc.

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Concurring Arbitrators' Signature(s)


Philip Bogowsky, Esq.
Public Arbitrator, Presiding Chair


Signature Date

Martin Mandel
Public Arbitrator

Signature Date

Linda L. Blackwell
Industry Arbitrator

Signature Date

Date Served:

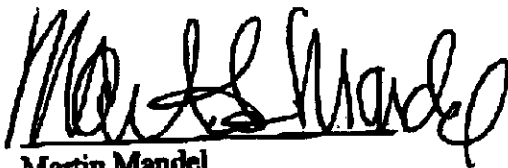
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Concurring Arbitrators' Signature(s)

Philip Borowsky, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Martin Mandel
Public Arbitrator

April 5, 2001
Signature Date

Linda L. Blackwell
Industry Arbitrator

Signature Date

Date Served:
APR 06 2001

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Signature Date

Martin Mandel
Public Arbitrator

Signature Date



Linda L. Blackwell
Industry Arbitrator

4-6-01
Signature Date

Date Served:
APR 06 2001